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**MONTEREY, CALIFORNIA**

**THESIS**

**“WHAT THE HELL DO WE DO NOW?” A POLICY  
OPTIONS ANALYSIS OF STATE, LOCAL, AND TRIBAL  
LAW ENFORCEMENT PARTICIPATION IN  
IMMIGRATION ENFORCEMENT**

by

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September 2013

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STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT PARTICIPATION IN  
IMMIGRATION ENFORCEMENT**

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## ABSTRACT

Many components come together to form not only the Department of Homeland Security (DHS), but the larger homeland security enterprise across the country. State, local and tribal assets are part of the fabric of homeland security efforts, along with federal entities, in prevention, response and recovery. While immigration enforcement at the federal level was formally brought into DHS, state, local and tribal (SLT) enforcement agencies are potential partners in that effort, as pointed out in the 9/11 Commission Report.

This thesis outlines some of the legal authorities for the use of local agencies, the diversity of approach and opinion in these efforts, and a cross-section of agency policies and SLT ordinances that direct enforcement efforts. Using a Policy Options analysis framework, SLT agency policies were examined and evaluated in five areas: effectiveness, legality, acceptability, efficiency, and implementation.

Based on this research, it is apparent that not only is there a disparity of opinion and approach to immigration enforcement, there is a lack of any policy at all for a majority of agencies. Recommendations for enforcement efforts include not only the importance of forming a policy, but doing so in a collaborative way, including federal, SLT and community partners.

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## LIST OF ACRONYMS AND ABBREVIATIONS

AILA	American Immigration Lawyers Association
BJS	Bureau of Justice Statistics
BOCS	Board of County Supervisors
CAB	Community Advisory Board
CBO	Community Based Organization
CBP	Customs and Border Protection
CCP	Community Corrections Partnership
CDCR	California Department of Corrections and Rehabilitation
CLEAR	Clear Law Enforcement Criminal Alien Removal Act
COPS	Community Oriented Policing Services
CPD	Chicago Police Department
CRS	Congressional Research Service
DHS	Department of Homeland Security
DOJ	Department of Justice
EPD	Escondido Police Department
FOIA	Freedom of Information Act
GO	General Order
HSEA	Homeland Security Enforcement Act
IACP	International Association of Chiefs of Police
ICE	Immigration and Customs Enforcement
IPC	Immigration Policy Council
IVF	Immigration Violator File
LAPD	Los Angeles Police Department
LIT	Local Immigration Team
MCSO	Maricopa County Sheriff's Office
MOU	Memoranda of Understanding
MPD	Milwaukee Police Department
NCIC	National Crime Information Center
NCLR	National Council on La Raza
NILC	National Immigration Law Center

NSA	National Sheriff's Association
OLC	Office of Legal Counsel
PERF	Police Executive Research Forum
POP	Problem Oriented Policing
PWC	Prince William County
PWCPD	Prince William County Police Department
SFPD	San Francisco Police Department
SLT	State, Local & Tribal
UCR	Uniform Crime Report
UK	United Kingdom
UKBA	United Kingdom Border Agency
VBPD	Virginia Beach Police Department

## EXECUTIVE SUMMARY

Elemental to the homeland security effort is a robust and reasonable approach to immigration enforcement. Immigration and Customs Enforcement is a key agency in the Department of Homeland Security. Beyond federal efforts, however, there is what the 9/11 Commission Report described as a “growing role” for State, Local and Tribal law enforcement agencies to participate and cooperate in immigration enforcement. Federal law and a myriad of court decisions and legal opinions reflect authority for local involvement in immigration enforcement, but to what level that authority extends is by no means clear. Some state and local governments have attempted to clarify or add to immigration enforcement options through legislation. This has largely grown from frustration over lack of federal legislative reform efforts. The Supreme Court weighed in with a 2012 decision making it clear that drafting immigration law is a federal purview, but finding that requiring state or local law enforcement to participate in enforcement could come from state houses. With the issue still clouded, the question for many local agencies remains: “What the hell do we do now?”

This thesis reviews a cross-section of agency policy options and approaches to immigration enforcement across the country. Broadly, policies that currently exist reflect two basic approaches - directed enforcement policies in which officers or deputies actively participate in immigration enforcement through some means, also cooperating with federal authorities; and non-cooperative/sanctuary policies which limit or eliminate officers’ or deputies’ ability to participate in immigration enforcement or cooperate with federal enforcement. The issue of immigration and its enforcement is politically and socially charged. Generally each of these policy positions is reflective of a political climate, certain constituencies or advocacy groups, or a combination of these in a given region or municipality. Difficult to find, though not completely absent, is an approach to immigration enforcement at a local level that was collaborative and sought consensus among interest groups, enforcement agencies at the local and federal level, and the community. Using the policy options analysis framework, these policies are compared.

Collaborative policy is described and determined to best meet the evaluative criteria of effectiveness, legality, acceptability, efficiency and implementation.

Noteworthy in the research is the lack of immigration enforcement policy amongst the majority of local law enforcement agencies. Over half maintain no policy at all. Key among recommendations described in this work is the need for agencies to have a policy, collaboratively formed, to address enforcement efforts. Law enforcement agencies cannot wonder what to do next if they have done nothing to address the issue where they can. Agencies should look to build relationships amongst affected groups and communities and build new, innovative approaches to immigration enforcement.

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## I. INTRODUCTION

The June 2012 split decision ruling by the United States Supreme Court with regard to the State of Arizona's controversial Senate Bill 1070 (SB 1070)<sup>1</sup> may have clarified certain aspects of state laws and enforcement of immigration by state, local and tribal (SLT) police agencies—particularly in Arizona. The ruling, however, provided no further clarity about the extent SLT agencies should or can involve themselves with immigration enforcement, nor guidance towards any best practices or policy. Likely, it could not, or was not, intended to. SB 1070 and the period leading up to the ruling put the immigration enforcement debate very much in the national consciousness.

The Supreme court struck down provisions of Arizona' SB1070 that; made it a misdemeanor not to comply with federal alien registration requirements; made it a misdemeanor for an unauthorized alien to seek or engage in work in Arizona; and that authorized warrantless arrest in Arizona of anyone that the officer has probable cause to believe has committed any public offense that makes the person removable from the United States.<sup>2</sup> The Supremacy Clause gives Congress the power to preempt state law and that was at the heart of the decision of those provisions along with the Federal Government's power of immigration.<sup>3</sup> The Court left in place the provision of the law that the state's requirement that a subject's immigration status be checked during a stop, detention or arrest. However, it left in question whether this practice would unconstitutionally delay the detainees' release.<sup>4</sup>

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1. Senate Bill 1070, Arizona, 2010 Titled the "Support our Law Enforcement and Safe Neighborhoods Act," it was more commonly referred to as simply SB 1070. The passage of SB 1070 and subsequent state and national debate that ensued, highlighted the immigration issue and what were appropriate measures to respond to it. As originally enacted, SB 1070 made it a misdemeanor for an alien to be in Arizona without appropriate documentation, prohibited state, county and local officials from restricting or immigration enforcement (providing for legal action if they did so), restricted day-labor type hiring activities and transportation of illegal aliens, and obligated police to determine a person's immigration status during a lawful stop, or detention or arrest if there was reasonable suspicion that the person is an illegal alien. It is the last portion regarding those police actions that the U.S. Supreme Court left in place.  
<http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>.

2. United State Supreme Court, *Arizona, et al. v. United States* No. 11-182, June 25, 2012, 2–4, <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>.

3. *Ibid.*, 1–2.

4. *Ibid.*

The basic parameters for SLT immigration enforcement are still not entirely clear or understood. Direction for SLT agencies, policies and best practices vary markedly across the country resulting in what has been likened to a “crazy quilt running the gamut from requiring local police departments to enforce federal immigration law, to expressly prohibiting local law enforcement in so-called “sanctuary” communities from cooperating with their federal counterparts”<sup>5</sup>

This work examines the role of state and local law enforcement in immigration enforcement, and applicable laws and authorities, particularly in the interior of the United States. It will discuss what is known, where there is confusion, disagreement or dissent, as well as portions of the “crazy quilt” exhibited in SLT agency and government policies where they exist. Further, it is the intent of the researcher to look for and examine elements of various approaches, and where gaps exist, to consider new and innovative approaches to the issue.

## **A. RESEARCH QUESTION**

### **What the Hell Do We Do Now?**

Given basic opposing views on the topic, which this thesis will discuss, what type of policy should be considered for adoption and implementation by state, local, and tribal law enforcement? Mixed messages and interpretations of federal immigration laws and court decisions abound as do opinions of advocacy groups, legal professionals, scholars and others. How does state, local and tribal law enforcement contend with immigration enforcement responsibilities/authority and maintain sound community policing relationships?

## **B. PROBLEM STATEMENT**

There is distinct lack of continuity amongst state, local and tribal law enforcement across the United States in their interpretation and application of federal immigration laws and policies. Moreover, states like Arizona have enacted laws enhancing

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5. Police Executive Research Forum (PERF), “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak Out On Local Immigration Enforcement,” April 2008, 5, <http://policeforum.org/library/critical-issues-in-policing-series/Immigration%28%2529.pdf>.

immigration enforcement at the state and local level, while California is considering law to diminish law enforcement's cooperation in such enforcement.<sup>6</sup> Efforts of officers and deputies in the field and in local jails are inconsistent across the nation in this area.<sup>7</sup> Absent consistent direction nationally, law enforcement officers, agencies and the communities they serve struggle to balance enforcement efforts, homeland security concerns, and positive relations, particularly among immigrant communities.

Some state and local jurisdictions may have implemented practices that may be beneficial in advancing the discussion towards best practices in balancing the above concerns.<sup>8</sup> Innovative collaborative approaches in other issues facing SLT enforcement agencies, like realignment of offender populations for example, have been, and are being developed that may lend themselves to the ongoing discussion of immigration enforcement, so salient an issue in virtually every part of the country.<sup>9</sup>

This research will examine origins of the issue—how we got here, legal considerations, and policies considered and/or in use. Providing a vantage point that separates itself from political concerns, past practice and other limiters, it will seek to objectively evaluate possibilities for state, local and tribal law enforcement to consider in an effort to reach sound immigration enforcement policy and best practices.

SLT law enforcement agencies have an integral role to play and unique capabilities in the homeland security arena. Immigration enforcement is a key component to homeland security efforts as discussed in the 9/11 Commission Report. Cooperation in immigration enforcement efforts, at virtually any/every level by SLT law enforcement,

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6. Tom Amiano, 2011, AB 1081, (vetoed by Gov. Brown, September 2012, amended and re-introduced as AB 4 in December 2012).  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB1081&search\\_keywords=.](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1081&search_keywords=.) & United States Supreme Court, Arizona, et al. v. United States No. 11-182, June 25, 2012, 2-4.

7. Debra A. Hoffmaster, Gerard Murphy, Shannon McFadden, and Molly Griswold, "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," Police Executive Research Forum (PERF) 2010, iii.  
<http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>.

8. Ibid.

9. Contra Costa County, AB 109 Operational Plan, <http://www.co.contra-costa.ca.us/index.aspx?NID=3113>.

enflames controversy among stakeholders. A collaborative approach towards best practices is desirable and could contribute to the discourse.

## **C. METHODOLOGICAL STRUCTURE**

Using the Policy Options framework, this work will examine current policies, local legislation and enforcement activities of SLT enforcement jurisdictions to determine possible options or blend of options provide a potential collaborative model for best practices for policy and enforcement.

### **1. Object/Unit of Study**

Enforcement or Policy guideline - Interpretation and subsequent application of Federal law and policies by state, local, and tribal law enforcement is disjointed and inconsistent.

### **2. Sample Selection**

This thesis will look at SLT law enforcement policies/procedures and opinions towards federal legislation, U.S. Court decisions, state initiatives and even local or regional political/governmental authorities.

### **3. Data Sources**

Data will be taken from literature, as well as existing law and policies; potentially also from primary sources like internal documents, expert/policy-maker input.

### **4. Type of Analysis**

The research will utilize the “Policy Option Analysis” method, examining the issue through the steps outlined in lecture and texts: Defining the Problem; Examining Alternative Solutions; Selecting Criteria for Judging Success; Projecting the Outcomes from Alternative Solutions; Analyzing Outcomes; ultimately Choosing the Best Solution and Explaining the Recommendation. Relevant criteria will include—effectiveness, legality, acceptability (by communities and enforcement), efficiency, and implementation.

### **5. Output**

This thesis will represent policies, processes or potential best practices that would be applicable to state, local and tribal law enforcement policy efforts. This thesis is for use by readers to assist in the development of local/regional policies.

#### **D. OVERVIEW OF POLICY OPTIONS**

**Option 1:** Vigorous immigration enforcement by SLT Law Enforcement under existing constraints – laws, decisions, and government codes

**Option 2:** Do not participate in immigration enforcement. Leave any processing of potential immigration violation/violators to the federal authorities.

**Option 3:** Seek a more collaborative and innovative approach among SLT enforcement agencies, SLT governments and authorities, community groups and other stakeholders, to gain guidance and for formulation of a better policy and better approach/”best practices” to the issue.

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## II. LITERATURE REVIEW

State and local law enforcement personnel continue to assist in the effort to prevent terrorist attacks in a critical way to protect American citizens.<sup>10</sup> The literature highlights there is still much debate and disagreement about local law enforcement's role with some assets and activities of the DHS, particularly in immigration enforcement. The 9/11 Commission report cites immigration services as a way of reaching out to immigrant communities to include gaining intelligence. It also says there is a growing role for state and local law enforcement agencies in that area.<sup>11</sup> This review examines relevant literature concerning local law enforcement's legal authority and responsibility in immigration enforcement, disagreement or lack of clarity on the issue, as well as gaps that may need further research.

### A. SITUATION: FORCE MULTIPLIERS AND FIRST PREVENTERS

Literature outlines the critical intervention of routine law enforcement and its potential ability to thwart incidents. In his article “State and Local Law Enforcement Contributions to Terrorism Prevention” Special Agent William McCormack, J.D., outlines several such cases.<sup>12</sup> In 1988 a New Jersey Trooper discovered several bombs in a van after observing the unusual behavior of a suspect near the vehicle on the New Jersey Turnpike. In 1997 a roommate of would-be terrorists informed New York officers of their bomb-making and plans to detonate them. In 1995, an off-duty Detective Sergeant working a second job in Iredell County, North Carolina observed and reported money-laundering activities via a tobacco shop. He reported it to the Bureau of Alcohol Tobacco and Firearms (with the FBI subsequently becoming involved). The case led to the arrest of the perpetrators for funding Hezbollah.

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<sup>10.</sup> William McCormack, “State and Local Law Enforcement Contributions to Terrorism Prevention,” FBI Law Enforcement Bulletin, March 2009, 7, <http://leb.fbi.gov/2009-pdfs/leb-march-2009>.

<sup>11.</sup> Thomas Kean, Lee H. Hamilton, Richard Ben-Veniste, Bob Kerrey, John F. Lehman Fred Fielding, Jamie S Gorelick, Timothy J. Roemer, Slade Gorton, and James R. Thompson, “The 9/11 Commission Report,” 390.

<sup>12.</sup> McCormack, “State and Local Law Enforcement Contributions,” 2–4.

The same principle might be true in immigration enforcement. As pointed out in Congressional testimony by Dr. Kris Kobach, assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing the immigration laws. There are approximately 18,000 agencies with more than 800,000 SLT police officers nationwide.<sup>13</sup> This represents a massive force multiplier.<sup>14</sup> These and other similar examples reaffirm local law enforcement's status on the front lines potentially impacting homeland security and immigration enforcement.

## **B. NATURE OF LAW ENFORCEMENT DUTIES**

By nature of their duties, law enforcement officers often become “first preventers, rather than first responders.”<sup>15</sup> It has been documented that contact during these duties can reveal potential issues that concern immigration related issues. Dr. Kris Kobach writes that four of the nineteen 9/11 hijackers were contacted, and some cited, during traffic stops while in the U.S., prior to the hijackings.<sup>16</sup> Mohamed Atta was stopped twice in 2001; Hanji Hanjour was cited in August 2001; Ziad Jarrah was stopped just two days before hijackings, for speeding on September 9, 2001,<sup>17</sup> and Nawaf al Hazmi was stopped for speeding in April, 2001.<sup>18</sup> In two of the cases, Jarrah and Hazmi were in violation of immigration laws, at least civilly, due to improper listing of immigrant status. Jarrah was listed as ‘tourist’ not ‘student’ while in flight school and Hazmi stayed beyond

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13. Brian A. Reaves, “Census of State and Local Law Enforcement Agencies, 2008,” USDOJ, July 2011, 2, <http://www.bjs.gov/content/pub/pdf/csllea08.pdf>.

14. United States Senate, Committee on the Judiciary, Testimony of Kris Kobach, April 22, 2000, [http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281ff81547&wit\\_id=4f1e0899533f7680e78d03281ff81547-1-1](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281ff81547&wit_id=4f1e0899533f7680e78d03281ff81547-1-1).

15. McCormack, “State and Local Law Enforcement Contributions,” 5.

16. Kris W. Kobach, The Heritage Foundation, “Terrorist Loophole: Senate Bill Disarms Law Enforcement” Web Memo, 1092 May 24, 2006, <http://www.heritage.org/research/reports/2006/05/terrorist-loophole-senate-bill-disarms-law-enforcement>.

17. McCormack, “State and Local Law Enforcement Contributions,” 5–6.

18. Kobach, “Terrorist Loophole.”

the six-month visa limit which expired in July 2000.<sup>19</sup> Law enforcement officers do not seem to have the knowledge, training or policy to conduct follow-up on immigration related issues.<sup>20</sup>

What the literature in these cases reveals is the fact that state and local law enforcement officers encounter people and situations that overlap immigration and homeland security issues. Law enforcement officers patrol every community, every day. They know their areas. They can spot people, things, and behavior that are out of the ordinary.<sup>21</sup>

### **C. DOCUMENTED DISAGREEMENT IN PRACTICE**

There is a wide disparity outlined in interpretation of federal immigration laws, state and local law enforcements' role in enforcing those laws and side-effects of an enhanced local role in immigration enforcement.

The International Association of Chiefs of Police (IACP) published a somewhat sweeping statement in a 2004 position paper indicating, that state, local and tribal police are *not required to enforce federal immigration laws*. (emphasis kept from the original document). The IACP maintained that the federal government and its agencies are the authorities responsible for the enforcement of immigration law.<sup>22</sup>

There are suspiciously few laws or precedents in the research and literature by which state and local law enforcement can adopt a strategy in relation to immigration enforcement.

In 1983, the United States 9<sup>th</sup> Circuit Court ruled, in *Gonzalez v. City of Peoria*, that local law enforcement could enforce *criminal* provisions of federal immigration law,

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19. *Ibid.*, 1–2.

20. *Ibid.*, 2.

21. James R. Edwards, “Officers Need Backup: The Role of State and Local Police in Immigration Enforcement,” Center for Immigration Studies. <http://www.cis.org/State%2526LocalPolice-ImmigrationLawEnforcement>.

22. Gene Voegelin, International Association of Chiefs of Police, “Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement,” 2004, 2, <http://www.theiacp.org/PublicationsGuides/TopicalIndex/tabid/216/Default.aspx?id=553&v=1>.

specifically enumerating 8 U.S.C 1325. That section makes it a federal misdemeanor to enter the United States at a time or place other than designated by immigration officers; to elude examination or inspection by immigration officers; or to enter, or attempt to enter, the United States by willfully false or misleading representation or willful concealment of a material fact.<sup>23</sup> While this gives guidance and makes allowance for criminal enforcement of immigration law, the readings indicate application can vary. Some states, for example, require misdemeanors to be committed in an officer's presence to allow for arrest—so the decision/federal law would not be applicable nor detention and arrest allowable. The Gonzalez case is germane to this issue. In most cited cases, immigration enforcement came about in the context of enforcing criminal matters,<sup>24</sup> the core of Gonzalez.

The limitation for enforcement of criminal immigration violations by state and local authorities was broadened somewhat (and perhaps muddied as well) by a case in the 10th Circuit Court in 2001—U.S. vs. Santana-Garcia. A Utah officer stopped and subsequently arrested two motorists who said they were driving to Colorado. When asked if they were in the U.S. legally, they answered “no” during that questioning. The court upheld their arrest. Despite the defendants' violation being a civil one (illegal presence), the court found that state officers possess “implicit authority” or “general investigative authority” to inquire into possible immigration violations.<sup>25</sup>

Despite that, it is documented in the literature that immigration related issues are vested in the federal government via documentation to include the Constitution, U.S. Code, the Immigration and Naturalization Act and other authorities. However, law enforcement officers swear an oath to uphold the law—to include the U.S. Constitution, which implies federal laws.<sup>26</sup> It may not be a question of requirement to enforcement but

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23. Hiroshi Motomura, UCLA Law Review, “The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line,” 2011, Vol. 58, no. 6: 1823–1824, <http://www.uclalawreview.org/pdf/58-6-10.pdf>.

24. Lisa M. Seghetti, Karma Ester, and Michael John Garcia, Congressional Research Service, “Enforcing Immigration Law: The Role of State and Local Law Enforcement,” 8. <http://www.hsl.org/?view&did=37589>.

25. Ibid.

26. Edwards, “Officers Need Backup,” 6.

perhaps a duty to enforce. The Department of Justice published an opinion in 1996 indicating, that law enforcement officers are permitted to enforce federal statutes providing those activities do not impair federal regulatory interest.<sup>27</sup>

Michael Garcia of the Office of Legal Counsel (OLC) for Department Justice wrote an opinion for the OLC in 2002 that seems to take enforcement a step farther. It said states were like the federal government and possessed the status of sovereign entities. So, states do not require delegation of federal authority in order to make arrests for violations of federal law—that power is inherent in on sovereign to accommodate the interests of another.<sup>28</sup>

DHS' literature designed to provide guidance to state and local enforcement actions does little to provide great clarity. The literature outlines three basic ways in which state or local law enforcement is authorized to involve themselves with immigration enforcement actions. In summary, the first (actually two different items) allows state and local law enforcement to be involved in *criminal* (emphasis added) immigration violations per U.S. Code (8USC, 1324(c)) or when there is an “actual or imminent mass influx of aliens” local authorities may act as federal immigration officers.<sup>29</sup>

The same publication discusses two other ways that state and local agencies are authorized to act, outside of the above, on immigration issues. One is under written agreement between the agency and DHS, enlisting voluntary assistance relating to investigation and enforcement of immigration laws and violations. The agreements are routinely referred to as 287(g) agreements based on the Immigration and Naturalization Act, found in 8 USC 1357(g)(1).<sup>30</sup> Agencies cooperating with DHS under this agreement

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27. Ibid., 6

28. Michael J Garcia, and Kate Manuel, Congressional Research Service, “Authority of State and Local Police to Enforce Federal Immigration Law,” September 10, 2012, 19, <http://www.fas.org/sgp/crs/homesec/R41423.pdf>.

29. Department of Homeland Security (DHS), “Guidance on State and Local Governments’ Assistance in Immigration Enforcement and Related Matters,” September 21, 2011, 6, <http://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf>.

30. Ibid., 7.

are required to have participating officers qualify to perform immigration officer functions via training and knowledge of federal immigration laws. Local agencies are essentially minting Immigrations level officers from their own personnel.

A second authorization discussed comes from the concept of ‘cooperation’ with the DHS, which it defines as rendering of assistance by state and local officers to federal officials, in enforcement of the INA. These state and local officers must be responsive to the direction and guidance of federal officials charged with enforcing the immigration laws.<sup>31</sup>

Functionally, this cooperation takes the form of officers from state or local agencies working on a task force with the DHS, assisting DHS immigration in the service of search warrants, provision of facilities to DHS, granting access to facilities for identifying detained aliens, or similar joint efforts.<sup>32</sup>

DHS makes it clear that it maintains primacy in immigration enforcement and state or local efforts take place under DHS’s guidance. The literature outlines numerous actions that it deems impermissible by state and/or local agencies. While not inclusive of all possibilities, the list is lengthy. Impermissible actions include establishing immigrant removal or entry policies in the U.S., adding criteria or tasks for aliens to stay in the U.S., referring large numbers of certain classes of aliens to DHS and burdening DHS limited resources.<sup>33</sup>

Key among the impermissible acts, given the current actions by some state and local governments, is requiring state or local law enforcement officer inquire into the immigration status of a specified group or category of individuals.<sup>34</sup> In Virginia, Prince William County (PWC) Supervisors passed resolutions in 2007 seemingly in contradiction to the DHS provision. The PWC Board required staff to withhold as many

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31. Ibid., 8.

32. Ibid., 13.

33. Ibid., 14.

34. Ibid.

County services as possible from illegal immigrants. It also required that if an officer had probable cause, to inquire into a person's immigration status during all detentions, including traffic stops.<sup>35</sup>

Similarly in recent articles, and at the crux of the case in front of the U.S. Supreme Court in 2012, was Arizona's SB 1070, from 2010. While other provisions were struck down, this portion of Arizona's law was upheld by the U.S. Supreme Court in its decision, allowing the requirement that police officers stopping someone make efforts to verify the person's immigration status with the federal government.<sup>36</sup>

These are only two isolated, if not celebrated, examples at state or local legislation in the literature to increase SLT involvement in immigration enforcement. They are clearly not the only examples. In a report from the Police Executive Research Forum (PERF) in 2008, the first six months of 2007, saw 41 states passing immigration related measures. The situation nationally goes from requiring local police departments to enforce federal immigration law, to expressly prohibiting local law enforcement in so-called "sanctuary" communities from cooperating with their federal agencies.<sup>37</sup>

An example in the literature on the 'sanctuary' side of the discussion is Takoma Park, Maryland. The town has had a sanctuary ordinance since 1985. In a 2007 renewal, the town struck down a recommended provision allowing officers to contact ICE if a subject has a federal immigration warrant in the FBI's National Crime Information Center (NCIC) database.<sup>38</sup>

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35. Thomas M. Guterbock, Christopher S. Koper, Milton Vickerman, Bruce Taylor, Karen Walker, Timothy Carter, and Abdoulaye Diop, Weldon Cooper Center for Public Service, Center for Survey Research, University of Virginia (2009), "Evaluation Study of Prince William County Police Illegal Immigration Enforcement Policy: Interim Report," [http://www.virginia.edu/surveys/Projects/2010/PWC09\\_Immigration/Interim%20Report.Final.pdf](http://www.virginia.edu/surveys/Projects/2010/PWC09_Immigration/Interim%20Report.Final.pdf).

36. Tom Curry, "High Court Strikes Down Key Parts of Arizona Immigration Law," NBC News, June 25, 2012, [http://nbcpolitics.msnbc.msn.com/\\_news/](http://nbcpolitics.msnbc.msn.com/_news/).

37. PERF, "Critical Issues in Policing Series: Police Chiefs and Sheriff's Speak Out On Local Immigration Enforcement," 5.

38. *Ibid.*, 6.

Chief of Police in Takoma Park, Ronald Ricucci, indicated that his officers cannot talk with or cooperate with ICE.<sup>39</sup> Such measures would seem to fly in the face of U.S. Code authority to deal with criminal aliens discussed above.

#### **D. INCONCLUSIVENESS IN THE DISCUSSION**

These attempts at legislation illustrate the level of confusion and legal disagreement in the literature on the issue of the role of state and local law enforcement on immigration enforcement issues. Aside from the legality is the efficacy of such measures.

In an ‘Issue Packet’ published by the American Immigration Lawyers Association (AILA), an immigrant advocacy group, are listed some general concerns about local enforcement of immigration issues. (These items were in response to proposed federal legislation of Clear Law Enforcement Criminal Alien Removal-CLEAR and the Homeland Security Enhancement Act—HSEA) In summary, they state that: 1) the efforts of immigration enforcement will undermine community based policing initiatives, making immigrant community members afraid to come forward to talk to the police even when the victim or witness to crime; 2) local law enforcement lacks experience, training and resources to enforce immigration law; 3) local agencies will be further drained financially in attempting to enforce immigration; and 4) local attempts in the past have failed resulting in significant monetary liability to the respective municipalities.<sup>40</sup>

Interestingly, a publication some four years later by the Department of Justice (DOJ) Community Oriented Policing Services (COPS) revealed very similar issues. While this literature was a result of input from immigrant advocates, it also was a partnership with the National Sheriff’s Association (NSA) and law enforcement leaders. The paper cited a lack of resources, language barriers, distrust of law enforcement, and

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39. Ibid.

40. American Immigration Lawyers Association (AILA), “AILA Issue Packet: CLEAR and HSEA: Local Law Enforcement of Civil Immigration Laws,” February 2004, 4.  
<http://www.aila.org/content/default.aspx?bc=6755|37861|25667|33496|10139>.

concerns about deportation or ICE actions among immigrant communities.<sup>41</sup> It also cited the need for training for officers and need proactive policies.

The Congressional Research Service (CRS) in their 2009 publication, “Enforcing Immigration Law: The Role of State and Local Law Enforcement” underscores the concerns expressed by both immigrant advocates and law enforcement. They provide a pro/con analysis of state and local immigration enforcement that lists impact on communities (pushing some away from law enforcement), draining of resources, a need for training and a debate over national security benefits.<sup>42</sup> Some think immigration enforcement would uncover potential terrorists, while the belief of others that it would push immigrants underground would actually thwart that effort.

These themes seem to resonate with law enforcement agencies and officials as well as advocacy groups for immigrants and foreign-born residents. On the one hand, protection against criminal and terrorist aliens is a sound, almost common sense idea. The examples of law enforcement encounters with 9/11 hijackers are chilling notions of what ‘might have been’ had they been detained. On the other hand, stepped-up immigration enforcement efforts under the guise of homeland security may push affected groups further underground.

Outlined in the PERF report, Sheriff Jim Pendergraph, of Mecklenburg County, North Carolina pointed out in his efforts to enforce immigration as a 287(g) participant uncovered immigrants from 58 different countries arrested in Mecklenburg County. They found immigrants from countries that have made it known that they’re involved in terrorism – citing it as a national security issue.<sup>43</sup>

David Alejandro of ICE reminded the executive law enforcement summit, in that same literature, of a lot of cultural differences that are misinterpreted. Many in the

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41. United States Dept. of Justice, Community Oriented Policing Services (COPS), “Enhancing Community Policing with Immigrant Populations,” August 27, 2008, 6, [http://www.cops.usdoj.gov/Publications/e041016266-Enhancing-CP-Immigrant-Populations\\_b.pdf](http://www.cops.usdoj.gov/Publications/e041016266-Enhancing-CP-Immigrant-Populations_b.pdf).

42. Seghetti, “Enforcing Immigration Law,” 21–22.

43. PERF, “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak Out On Local Immigration Enforcement,” 26.

foreign-born population are not really afraid of being deported. Law enforcement officers are corrupt in their culture, so they are feared.<sup>44</sup> Immigration enforcement may or may not be the crux of the issue.

#### **E. POTENTIAL FURTHER RESEARCH**

One of the most telling indications in the literature of what we do not know in relation to state and local law enforcement's role in immigration enforcement comes from the PERF report. After surveying its membership in October 2007 and holding a summit in December 2007 with 69 chiefs of police, sheriffs and law enforcement executives, they only reached consensus on three issues. They felt it was appropriate, at arrest and booking, to check immigration status for serious offenses; they felt a national biometric identification card would be helpful (based on fingerprints or DNA); and they vocally desired that Congress set a policy for the nation.<sup>45</sup>

It seems that despite nearly twelve years that have elapsed since the 9/11 attacks, and the immigration related problems subsequently revealed to exist, we are no closer to providing concrete direction to state and local police agencies in immigration enforcement or if they should be involved at all.

Immigration laws are complex, however so are many other laws charged to SLT agencies. Criminal versus civil immigrant violation status is difficult to determine. Numerous entities have pointed out the need for training of officers for clarity in enforcement. Direction and a clear strategy would be a beneficial first step.

Future review and study could be attempted to determine fundamental items:

- Effects of, or needs for, immigration enforcement by SLT agencies. Very little objective information is available regarding the effects of enforcement, particularly in immigrant communities. Is there a chilling effect making crime go under-reported.<sup>46</sup> Most information is anecdotal. Baseline studies, measures of crime and security issues specifically in immigrant communities, willingness to support law enforcement are among largely unanswered questions.

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44. Ibid., 16.

45. Ibid., 32.

46. Ibid., 34.

- A common solution/Congressional direction. If the 113<sup>th</sup> Congress provides immigration legislation, will it provide clear strategy for immigration enforcement—through DHS, or state and local law enforcement. What do we do? Will state and local officers should have clear guidelines? How will it change the discussion.
- What would/should a national identification card entail? The chiefs in their report agreed it is necessary, is it acceptable in the United States? What are the legal issues and challenges? What are the logistical issues and challenges?

While we often do not know what we do not know, these items could begin to aid in better strategy, enforcement, and security.

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### **III. DIRECTED ENFORCEMENT POLICY OPTION**

[State and local law enforcement] must become engaged in immigration enforcement if the country is serious about achieving homeland security. State and local police officers are the eyes and ears on the home front. They know their territory. They should be enforcing immigration laws, just as they go after those who violate other laws.<sup>47</sup>

#### **A. OVERVIEW**

Some SLT law enforcement agencies across the United States have opted to take what this researcher terms a ‘Directed’ enforcement policy in relation to immigration enforcement and cooperation with Federal authorities. These agencies place an expectation on officers and deputies that they make immigration status queries a part of enforcement action at some point. While the directed enforcement may have slightly different approaches from jurisdiction to jurisdiction and from municipality to municipality, each contains a directive that officers or deputies seek to determine to the immigration status and legal authorization status to be in the country.

An important distinction to make at this point is the language of statutes and ordinances enacted at the state, local or tribal level, as well as policies and procedures directing law enforcement officers. Key words and phrases indicate discretion or lack of discretion for officers’ actions. Language in the above directives includes “shall/shall not,” to indicate the lack of discretion on an officer’s part—“regulations, or directives to express what is mandatory.”<sup>48</sup> Terms such as “may/may not,” “can,” or other language indicate discretion on an officer’s part in taking some action. Linguistically, the

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47. Edwards, “Officers Need Backup,” 10.

48. Merriam-Webster’s Collegiate(R) Dictionary, s.v. “shall shəl, ʃəl vb past should shəd, ʃhūd pres sing & pl shall (ME shal (1st & 3d sing. pres. indic.), fr. OE sceal; akin to OHG scal (1st & 3d sing. pres. indic.) ought to, must, Lith skola debt),” <http://libproxy.nps.edu/login>. It is important to also note here also that “[shall] has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears” [People v. O’Rourke, 124 Cal. App. 752, 759 (Cal. App. 1932)] accessed July 16, 2013 <http://definitions.uslegal.com/s/shall/>.

variations may seem subtle, but procedurally and legally, they make a vast difference in intent and direction of enforcement policy.

In the United States, there are over 18,000 state, local and tribal law enforcement agencies, according the Department of Justice Bureau of Justice Statistics (BJS).<sup>49</sup> Each of those agencies operates under legal authorities stemming from codes, ordinances, and other regulations. Many, if not most, of those agencies maintain policy and procedure documents or general orders for the conduct of officers or deputies on significant enforcement or conduct issues. Despite commonalities that may exist in the overall fabric of American law enforcement, the diversity of the nation is reflected in diverse police procedures from state to state and region to region. This applies to immigration enforcement policies that may exist in a given SLT agency. Agencies that maintain directed enforcement policies in this arena may not look the same from agency to agency. Therefore, this thesis looks at several examples taken from agencies and case studies in various parts of the United States.

## **B. DIRECTED ENFORCEMENT APPROACHES IN AGENCIES AROUND THE COUNTRY**

### **1. Prince William County Police Department**

Located about 35 miles southwest of Washington, DC, in the State of Virginia, the Prince William County Police Department (PWCPD) experienced an increased interest in the issue of immigration enforcement in 2006. Prior to that, the Police Department maintained a similar policy to agencies in the Washington, DC, area officers did not generally ask contacted individual about their immigration status.<sup>50</sup> The Board of County Supervisors (BOCS) in Prince William County, however, drove efforts to change local government policy in regards to illegal immigrants, to include limiting or eliminating social services and a desire for the Police Department to become more involved in immigration enforcement, suggesting possible adoption of a 287(g)

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49. United States Dept. of Justice, Bureau of Justice Statistics, "Local Police," <http://www.bjs.gov/index.cfm?ty=tp&tid=71>.

50. Hoffmaster, et al., "Police and Immigration: How Police Chiefs are Leading Their Communities through Challenges," 2010, 14, <http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf>.

memorandum of agreement.<sup>51</sup> The Chief at the time, Charlie Deane, drafted a new policy directing immigration enforcement for the Prince William County Police. The policy adopted in General Order 45, reads much like those found in other law enforcement agencies and jail settings, but it is unusual in that Prince William police are mandated to conduct an immigration inquiry on every person arrested and taken into custody.

In part, General Order 45.02 directs that:<sup>52</sup>

Officers shall investigate the citizenship or immigration status of all persons who are arrested for a violation of a state law or county ordinance when such arrest results in a physical custodial arrest being conducted.

There may be circumstances under which the Fourth Amendment authorizes an earlier inquiry and officers may use their discretion in accordance with their experience and training to inquire as to the immigration status at an earlier stage. Officers must remain cognizant at all times of the legal justification to continue detention of a person. The permissible length of a lawful detention in every instance depends on all circumstances.

The General Orders in both 45.01 and 45.02 outline circumstances and procedures in detail under which officers may or may not make an arrest in matters involving illegal or suspected illegal immigrants. No real distinction or difference exists when, through the development of probable cause, an individual is believed to have committed a crime. An arrest and custody would ensue, and under PWCPD's General Orders, the arrestee's status would be checked.

However, if during the investigation while operating under reasonable suspicion of criminal activity, the officer receives confirmation from ICE that the subject of the investigation is illegally present in the United States and has a felony conviction and has been deported—the officer may arrest without a warrant. (under Virginia code 19.2—81.6).<sup>53</sup> Criminal ‘hits’ or warrants in the NCIC “Immigration Violator File” (IVF) with a criminal detainer, as well as *civil* IVF hits in the course of charging an individual with

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51. Ibid., 15–19.

52. Guterbock, et al., “Evaluation Study of Prince William County Police Illegal Immigration Enforcement Policy: Interim Report,” (2009), Appendix B.

53. Ibid.

enumerated misdemeanor and/or traffic offenses also allow the officer to arrest and charge an individual with immigration offenses.<sup>54</sup>

PWCPD officers may not arrest merely if an individual is present in the country illegally, with no other attendant criminal suspicion or activity. Moreover, if an NCIC ‘hit’ is exclusively civil in nature, with no additional criminal suspicion or activity, officers may not arrest an individual.

The General Orders and the PWCPD acknowledge that immigration enforcement is “vested in the Federal government,” but SLT law enforcement has an increasing role in “identifying, investigating, and apprehending persons who may be in violation of federal immigration law, particularly those who commit other violations of law.” However, policies stipulate that “the Police Department has no legal authority to independently enforce Federal immigration laws.”

## **2. Phoenix Police Department**

Phoenix, Arizona employs a police department of over 4,000 personnel, sworn and non-sworn.<sup>55</sup> In general, Phoenix is often considered “ground zero” in regards to immigration and immigration enforcement.<sup>56</sup> The status of the immigration debate, illegal immigration enforcement and public safety are felt here dramatically.<sup>57</sup> Phoenix’s efforts and policies in relation to immigration enforcement are complicated and overshadowed by the attention received by the Maricopa County Sheriff’s Office and its Sheriff, Joe Arpaio, proclaimed “America’s Toughest Sheriff.”<sup>58</sup>

The provision of SB 1070 left intact by the Supreme Court decision allowed the “shall” requirement that officers ask immigration status of offenders during a stop, detention or arrest.<sup>59</sup> That provision became part of Arizona statutory law, adding the

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54. Ibid.

55. Hoffmaster, et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges,” 31.

56. Ibid., 27.

57. Ibid.

58. Maricopa County Sheriff’s Office, <http://www.meso.org/About/Sheriff.aspx>.

59. United States Supreme Court, Arizona, et al., vs. United States, No. 11-182, June 25, 2012, 2-4.

new Article 8, to Title 11 of Arizona's Revised Statutes.<sup>60</sup> The Phoenix Police Department maintains a directed enforcement policy that meets statutory language and outlines procedural expectations for its officers. The policy requires officers question arrestees about citizenship.<sup>61</sup> Further the policy allows officers to contact federal authorities when they encountered arrestees they suspect are in the country illegally, after receiving supervisory approval.<sup>62</sup>

Found in Phoenix Police's Operations Order 4.48, the policy has provisions and directives contained in it that are similar to those outlined by PWCPD. There are instances where officers are directed that they *shall* inquire about immigration stands and/or make contact with federal authorities to confirm a subject's status. Other situations direct that an officer *may* ask for immigration status, based on the officer's discretion.

Operations Order 4.48 directs that officers shall ask all arrested persons "what country you are a citizen of and what is your place of birth."<sup>63</sup> Arrestees who are not United States citizens, under a waiver of the Miranda warning,<sup>64</sup> should be asked if they are in the country legally and if they have documentation of their lawful presence.<sup>65</sup> However, arrest is not the sole component that directs Phoenix Officers in immigration enforcement. Operations Order 4.48 makes inquiries allowable in consensual contacts or other interviews, but defers to the officers' discretion, with admonishments against racial profiling.<sup>66</sup> Other encounters, like traffic stops or lawful detentions developed out reasonable suspicion officers are directed that they shall make reasonable attempts to

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60. Arizona Revised Statutes, <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=11>.

61. Hoffmaster, Gerard Murphy, Shannon McFadden, and Molly Griswold, "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," 32.

62. Ibid.

63. Phoenix Police Department, Operations Orders, section 4.48, 8, sect. 7, B (1), [http://phoenix.gov/webcms/groups/Internet/@inter/@dept/@police/documents/web\\_content/066268.pdf](http://phoenix.gov/webcms/groups/Internet/@inter/@dept/@police/documents/web_content/066268.pdf).

64. Explanation of rights that must be given before any custodial interrogation, stemming largely from the Fifth Amendment privilege against self-incrimination. The person detained and interrogated must be made aware of the right to remain silent, the right to consult with an attorney and have the attorney present during questioning, and the right to have an attorney appointed if indigent. Without a Miranda warning or a valid waiver, statements might be inadmissible at trial. From *Miranda v. Arizona*, 384 U.S. 436 (1966). [http://www.law.cornell.edu/wex/miranda\\_warning](http://www.law.cornell.edu/wex/miranda_warning).

65. Phoenix Police Department, Operations Orders, 8, 7, B (1) (b).

66. Ibid., section 4.48, 3, 5.

determine a subjects immigration status with federal authorities, unless circumstances preclude doing so (considerations for not verifying with federal authorities are described as time or officer safety dependent—detentions being unreasonably extended, conditions are unsafe, work load, and other present duties).<sup>67</sup> In fact, the policy specifically states “Officers are cautioned against unnecessarily prolonging stops and detentions to determine a person’s immigration status.”<sup>68</sup>

Importantly, outlined in the policy are specific items of identification which lead to the presumption of legal presence in the United States (driver’s licenses, government or tribal issued identification cards for example); factors which may contribute to reasonable suspicion of unlawful presence (not intended to be complete or exhaustive); and strict admonishments against enforcement activities or investigations based on “race, religion, gender, sexual orientation, or economic status” to avoid racial profiling and provide recourse if it occurs.<sup>69</sup>

The Operations Order stresses cooperation and information sharing between the police department and federal authorities like ICE and Customs and Border Protection (CBP)—Phoenix’s nexus to the border provides a degree of contact with CBP and working partnerships not necessarily germane to interior immigration enforcement in non-border regions. Emphasis on criminal charges is evident for taking a subject into custody—either local criminal charges or warrants, federal criminal charges or warrants, or a combination.<sup>70</sup> Contact with federal authorities is directed in custody situations. Strictly civil federal charges, with no attendant criminal activity generally do not result in arrest or transport, merely referral to federal authorities via departmental reporting and documentation.<sup>71</sup> Law enforcement action is generally limited in civil matters, regardless of association with immigration status. The policy’s clear distinction here seeks to prevent being mired in complex issues that are part of overall federal immigration law,

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67. Ibid., 8–13.

68. Ibid., 4 sect. 5, B (3).

69. Ibid., 1–5.

70. Ibid., 5–8.

71. Ibid., 5, sec. 6, A.

much of which is purview of federal agencies alone, something the Supreme Court deliberated on in the decision in SB 1070.

### **3. State of Alabama**

Similar to Arizona's SB 1070, Alabama enrolled HB 56 in 2011. Like Arizona's measure, HB 56 places requirements on law enforcement officers in the state (and likely to inform agencies' policies) to verify a subject's legal status in the United States upon, stop, detention or arrest.<sup>72</sup> In the first ruling since the Supreme Court's decision on SB 1070, the 11th Circuit Federal Court of Appeals nullified most of the measures of HB 56, citing that decision. However, it left in place "sections 12, 18 (and) 30" which respectively allow for the above action by law enforcement officers, require the carrying of a valid driver's license and display of that license in a legal enforcement action, and the prevention of an undocumented alien from entering into a business transaction with state or political subdivision of a state – including obtaining a motor vehicle license.<sup>73</sup>

The provisions of this law, as it currently stands received mixed reactions. Some municipalities in the state have declined to enforce it, while others actively engage in it. The town of Clanton has opted out of enforcement of the law, while Tuscaloosa and Montgomery police have enacted enforcement efforts of the law.<sup>74</sup> Other states, like Georgia, are considering enrolling similar legislation. Law enforcement entities could easily adopt directed enforcement policies as an outgrowth of the law.

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72. State of Alabama, Office of the Attorney General, "Alabama Immigration Law, Act 2011-535," 32, <http://www.ago.state.al.us/Page-Immigration-Act-No-2011-535-Text>.

73. U.S. Court of Appeals, 11th Circuit, "United States vs. State of Alabama, Governor of Alabama," August 2012, 11, <http://www.ca11.uscourts.gov/opinions/ops/201114532.pdf>.

74. Jeremy Redmon, "Alabama's Show Me Your Papers law: A Cautionary Tale for Georgia," Atlanta Journal-Constitution, September 16, 2012, <http://www.ajc.com/news/news/alabamas-show-me-your-papers-law-a-cautionary-tale/nSCXw/>.

#### **4. Cooperation with Federal Authorities Outside of Policies or New Legislation**

While some procedural efforts to enforce immigration enforcement at the SLT agency level are derived from and/or driven by legislation and agency policy, some agencies cooperate with federal immigration authorities under existing provisions of federal statutes and the Constitution.

Formally, the Department of Homeland Security and ICE have four methods for relationships with SLT enforcement agencies. The Criminal Alien Program, Secure Communities, 287(g) programs in jails and task forces, and the National Fugitive Operations program.<sup>75</sup> However, on December 21, 2012 Director Morton of ICE announced in a news release on key priorities, “ICE has also decided not to renew any of its agreements with state and local law enforcement agencies that operate task forces under the 287(g) program.”<sup>76</sup>

In addition to formal programs such as these, ICE recognizes that “informal, flexible interactions where state and local law enforcement assist federal authorities in issues related to immigration enforcement that arise through their routine local law enforcement duties” are key to provision of “meaningful assistance” in immigration enforcement.<sup>77</sup>

While the federal agreements, cooperation and memoranda of understanding for DHS programs listed may drive local SLT agency procedures and even inform policy, an exploration of those federal programs specifically is beyond the scope of this work. Rather, it is this researcher’s intent to examine any impacts to SLT agency enforcement efforts at the local level. Many SLT agencies, as will be further discussed, do not maintain policies specific to immigration enforcement, yet assist federal authorities

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75. Marc R. Rosenblum, and William A. Kandel, “Interior Enforcement: Programs Targeting Criminal Aliens,” Congressional Research Service, December 2012, 13, <http://www.fas.org/sgp/crs/homesec/R42057.pdf>.

76. John Morton, “ICE announces year-end removal numbers, highlights focus on key priorities and issues new national detainer guidance to further focus resources,” <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm>.

77. Department of Homeland Security, “Guidance on State and Local Governments’ Assistance in Immigration Enforcement and Related Matters,” 4–5. <http://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigration-enforcement.pdf>.

through their “routine duties” or through a level of cooperation with federal immigration enforcement agencies. The influence on other agency policies as well as relations in areas, like community policing efforts, are impacted by some of the duties executed by the agencies and their officers.

*a. Escondido, California—Operation Joint Effort*

An SLT agency example of a cooperative effort with federal enforcement, in this case ICE, is ‘Operation Joint Effort’ conducted with the Escondido, California Police Department (EPD), launched in May of 2010.<sup>78</sup> The program was conceived based on a previous gang operation conducted in partnership with ICE. In that effort, an ICE officer spent time co-located with the EPD. Operation Joint Effort initially began with three ICE officers assigned, ultimately growing to eight officers and a supervisor.<sup>79</sup> The partnership formed with no written agreements or memoranda of understanding (MOU) between ICE and EPD; no funds are exchanged or other considerations provided.<sup>80</sup>

ICE officers work very much in tandem with EPD and provide support and enforcement and removal resources for immigration related issues. The operation focuses on criminal alien apprehension and potential removal. In the first two years after its implementation, Operation Joint Effort touts the apprehension of approximately 800 individuals many of whom were removed from the United States.<sup>81</sup>

This type of cooperative arrangement procedurally impacts the EPD in immigration efforts. Though no written policy was developed, at least initially, it is reflective of enforcement efforts carried out by a local agency that seek to assist immigration enforcement during routine law enforcement duties and operations. Some

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78. Department of Homeland Security ICE, “Partnerships with local law enforcement net criminal alien arrests,” News Release, <http://www.ice.dhs.gov/news/releases/1205/120508escondido.htm>.

79. Edward Sifuentes, “Police-ICE Partnership will have Written Guidelines,” North County Times, May 18, 2012, <http://www.utsandiego.com/news/2012/may/18/escondido-police-ice-partnership-will-have/>.

80. Ibid.

81. Department of Homeland Security ICE, “Partnerships with local law enforcement net criminal alien arrests,” News Release.

SLT agencies take part in collaborative relationships such as this in directed immigration enforcement, as discussed in ICE's guidance documentation.

### **C. EVALUATIVE CRITERIA-DIRECTED ENFORCEMENT OPTION**

Overall effects of directed enforcement policy or procedure options are, as with many enforcement policies and actions, difficult to measure – both qualitatively and quantitatively. Laws, ordinances, regulations and other authorities cited as informing policy can change and/or be open to interpretation. Success or failure may not be indicative of applicability beyond a given municipality or jurisdiction. What proves acceptable and implementable in one community may not be in another without alteration of the policy (if it is workable at all). Nonetheless, it is important to look at the above directed enforcement type efforts to at least try to determine shortcomings or positive potential in their application.

Ostensibly, one of the aims of a directed enforcement policy is to provide deputies and officers in SLT agencies guidance to take some level of enforcement action on subjects identified as illegal immigrants. Action taken can result in two basic levels of outcome (or both)—adjudication of any criminal sanctions in the SLT agency jurisdiction (theft, battery, robbery) and then subsequent federal immigration adjudication and determination for possible removal from the United States.

Agencies and municipalities across the country routinely keep data for law enforcement actions, and share many of these statistics with federal authorities (i.e., data for inclusion in the Uniform Crime Report—UCR),<sup>82</sup> determination of a respective agency's efforts in routine enforcement are fairly simple to measure. Likewise, ICE maintains some level of data on criminal alien removal and enforcement programs.<sup>83</sup> However, because there is little if any baseline *specific* data on illegal immigrants in a given community, their links to crime, their potential as national security concerns, numbers that may remain after implementation of an enforcement policy or action—it is

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82. Federal Bureau of Investigation, “Uniform Crime Reporting Statistics: Proper Use,” <http://www.fbi.gov/about-us/cjis/ucr/ucr-statistics-their-proper-use>.

83. Department of Homeland Security ICE, “Removal Statistics,” <http://www.ice.gov/removal-statistics/>.

difficult to measure a policies effect in a highly tangible or verifiable way. Outcomes of a policy are potentially interrelated to or impacted by many independent variables. An SLT agency’s policies or efforts in another facet of enforcement may impact immigration enforcement. Outside forces such as federal efforts, economic changes or political initiatives may also play a role in outcomes. An interim report on the Prince William County model from the University of Virginia, acknowledges these challenges with several “caveats” to a fairly extensive study.<sup>84</sup> The caveats to the report, as well as the findings, albeit tentative findings, can be extrapolated and applied to similar efforts and situations.

*Effectiveness*—Agencies utilizing directed enforcement of illegal immigration seem to report (where specific information and statistics are available) a level of effectiveness of their efforts. In California, both ICE and EPD indicate the arrest of a large number criminal aliens<sup>85</sup> as part of Operation Joint Effort. ICE cites more than 800 apprehensions in approximately two years of the operation.<sup>86</sup> The EPD reflect significant numbers of apprehensions in the program as well. In less than a year, 406 of the 800+ arrests cited by ICE were made in Escondido; among them were those with prior criminal history of child molestation, gang activity and drug offenses.<sup>87</sup>

Crime rates reported by the Phoenix police indicate significant drops in several areas. In 2008 property crimes dropped by 8%, while violent crimes were down 10%. The figures for 2009 reflected a 22% drop in property crimes and 18% decrease among violent crimes. While several factors contributed these statistics, Phoenix police’s strategies to address immigration crime, to include their revised policy are among them.<sup>88</sup>

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84. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2009), 39–40.

85. The term “criminal alien” is not defined in immigration law or regulation; however, at the broadest level it refers to any non-citizen who has ever been convicted of a crime in the United States. Not all criminal aliens are removable, and some removable aliens are not criminal. Rosenblum, “Interior Enforcement: Programs,” 2.

86. Department of Homeland Security ICE, “Partnerships,” News Release.

87. Craig Carter, Lieutenant, EPD, “Over 406 Arrested During Operation Joint Effort,” News Release, March 22, 2011, <http://police.escondido.org/over-406-arrested-during-operation-joint-effort.aspx>.

88. Hoffmaster, et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges,” 31.

The policy in Prince William County, as discussed above, was the subject of an extensive interim report in 2009. The findings discussed in that report are preliminary, coming just over a year from the policy's adoption, and approximately two years after announcement of the then intended policy. Taken in total, the PWCPD arrested 639<sup>89</sup> illegal immigrants in the last eight months of 2008 (the period after the policy's adoption) for an array of Part I and Part II offenses.<sup>90</sup> The report indicates that effects of these arrests have had "small to modest" effects on most of these types of crimes and rates of crime. Another interesting, and perhaps important, metric of the Prince William study is the study of the calls for police service (not merely arrest) subsequent to the policy. Overall, the report indicates that after the policy's adoption, calls for service were reduced by 5%—"statistically significant."<sup>91</sup> Rates of calls for service vary among different types of crime (both Part I and Part II) with some offenses dropping as much as 9% and some approximately 2% after July 2007, when the intended policy was first announced.<sup>92</sup> While it estimates the illegal immigrant community in Prince William County in the tens of thousands, the University of Virginia statistics do not reflect, with any accuracy, the number of removals of illegal aliens from the jurisdiction. Since the announcement and inception of the policy, it only provides an estimate of "people who left" at less than 5,000 but more than a few hundred.<sup>93</sup> A little over a year later, the University of Virginia's final report on Prince William County Still could only estimate the reduction of illegal immigrants as between one and five thousand.<sup>94</sup> One can reasonably assume that some of those identified as illegal aliens arrested were removed from the United States and are reflected in the report's estimate.

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89. Guterbock, et al., "Evaluation Study of Prince William County Police," (2009), 42–43.

90. In the UCR Part I offenses are serious, often violent crimes, such as homicide, rape, robbery, etc. Part II offenses are lesser charges like fraud, drug abuse, other assaults, forgery, etc. - Federal Bureau of Investigation, Offense Definitions [http://www2.fbi.gov/ucr/cius2009/about/offense\\_definitions.html](http://www2.fbi.gov/ucr/cius2009/about/offense_definitions.html).

91. Guterbock, et al., "Evaluation Study of Prince William County Police," (2009), 42.

92. Ibid., 49.

93. Ibid., 69.

94. Thomas M. Guterbock, Christopher S. Koper, Milton Vickerman, Bruce Taylor, Karen Walker, and Timothy Carter, Weldon Cooper Center for Public Service, Center for Survey Research, University of Virginia (2010), "Evaluation Study of Prince William County Police Illegal Immigration Enforcement Policy: Final Report," 76, <http://www.pwcgov.org/government/bocs/Documents/13188.pdf>.

*Legality*—”Federal immigration law is very complicated, technical, and constantly changing.”<sup>95</sup> Consequently, its understanding and enforcement is challenging for SLT agencies and their officers and deputies. In this researcher’s estimation, this highlights the need for an agency policy to guide line level efforts. The United States Supreme Court decision of 2012, in *Arizona v. the United States*, found that federal law preempted the additional statutes Arizona attempted to adopt. While it disallows the adoption of those portions of the law, it did allow what have been described as the “show me your papers” element of the SB 1070 and like legislation.<sup>96</sup> The policies and procedures outlined above reflect efforts within the Supreme Court’s ruling. Laws, regulations, and policies which usurp federal supremacy on immigration matters would likely run afoul of legality for enforcement. Although, reasonableness of detention while investigating potential immigration violations (as with any suspected crime) is determinant and subject to challenge in the future. SLT efforts cannot extend length of detentions and a nexus to investigation whether a potential immigration violation or other suspected criminal activity. To do so would potentially violate constitutional protections.

*Acceptability*—Policy enabling SLT agencies to take directed enforcement action at some level in immigration matters will ostensibly meet with approval of constituencies that favor an enforcement approach to the issue. In Prince William County, the policy received vocal support from the citizen’s group ‘Help Save Manassas.’<sup>97</sup> The group, however, is an issue driven advocacy group that maintains its mission is to raise “public awareness of the negative effects of illegal aliens on our community.”<sup>98</sup> Help Save Manassas, as well as the Immigration Reform Law Institute took part in crafting the policy in Prince William County.<sup>99</sup>

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95. Anita Khashu, “The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties,” Police Foundation, April 2009, 27, <http://www.policefoundation.org/pdf/strikingabalance/Role%20of%20Local%20Police.pdf>.

96. Mark Sherman, “Supreme Court Issues Ruling on SB 1070,” Associated Press/Huffington Post, June 25, 2012, [http://www.huffingtonpost.com/2012/06/25/supreme-court-sb1070\\_n\\_1614121.html](http://www.huffingtonpost.com/2012/06/25/supreme-court-sb1070_n_1614121.html).

97. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2009), 10.

98. Help Save Manassas website, ‘about,’ <http://www.helpsavemanassas.org/index.php/about>.

99. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2009), 10.

However, the policy outlined above for PWCPD in General Order 45.02 reflects a revision from a more stringent directed enforcement policy. The original version was in effect for approximately 8 weeks and directed that officers “shall investigate” the citizenship of a subject detained if *probable cause* existed; it did not require a custodial arrest. The initial policy was rescinded on April 30, 2008 in favor of the policy discussed above.<sup>100</sup> The revision came after numerous and lengthy meetings of Prince William’s Board of Supervisors, some of which featured hours long public comment. Ultimately the Board adopted resolution 08–500 on April 29, 2008 to make the above change.<sup>101</sup> While advocates for stricter enforcement were a part of the original policy, immigrant advocates and other community members helped modify the policy as originally drafted. The debate polarized some residents. Hispanic groups criticized the original policy as inflammatory, clearly limiting acceptability, at least in its original draft, in parts of the community.<sup>102</sup>

The acceptability of SLT enforcement of immigration is likely to be intertwined with the perceptions of a particular agency in general. Likewise, attitudes towards the immigration issue at large may inform and affect opinion on directed enforcement adoption. Performance perceptions of police agencies reflect “underlying attitudes about immigration issues in the [jurisdiction] in general.”<sup>103</sup> Pre-conceived opinions and ideals are then represented in perceived acceptability of a directed enforcement policy. Individuals and interest groups come to the discussion with biases. Nonetheless, SLT agencies will have to grapple with a potential ebb in trust of their actions and that of government entities overall – particularly among Hispanic and other minority groups.<sup>104</sup> Some found such policy influential enough to leave their communities altogether— “people do not want to live in a county that is as unwelcome as PWC.”<sup>105</sup> The attitudes

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100. *Ibid.*, Appendix B, 45.02, Rescinded.

101. Phillip Campbell, Clerk of the Board, Prince William County, “Resolution 08–500,” April 29, 2008, <http://www.pwccgov.org/government/bocs/documents/008285.pdf>.

102. Sabrina Tavernise, “Tough Law Reduced Immigrants, Study Shows,” *New York Times*, November 17, 2010, [http://www.nytimes.com/2010/11/17/us/17immig.html?\\_r=1&](http://www.nytimes.com/2010/11/17/us/17immig.html?_r=1&).

103. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2009), 82.

104. *Ibid.*, 84.

105. *Ibid.*, 70.

overall in the Prince William County experience, in some quarters, reflect the county and the enforcement policy. In that county (PWC) “there has been very strong persecution of Hispanics. They were denied main services,” according to the Hispanic Committee of Virginia’s Jesus Moreno.<sup>106</sup> It would seem evident that segments of the population holding the same or similar opinions would find directed enforcement policy options difficult to accept at some level.

The data and attitudes, however, are not necessarily indicative of a lack of trust or acceptance of the police agency involved in directed enforcement activities. Both the interim and final reports by the University of Virginia showed trends that would seem to belie any lack of trust of law enforcement. The data did not suggest that there was any under-reporting of crime by Hispanic victims in Prince William County. Rates of reporting were nearly identical for Hispanic and non-Hispanic victims.<sup>107</sup> Anecdotally, it is frequently asserted that immigrants will avoid reporting crimes to the police, even if they are victims, if they believe officers or deputies could report immigration violations. Often any fear of law enforcement that *may* exist, stems not from directed enforcement or deportation concerns, but rather in many immigrants’ countries of origin law enforcement officers and agencies are corrupt.<sup>108</sup> In the PWCPD example, satisfaction with the overall performance of the PWCPD, in the final report by the University of Virginia, indicated a “statistically insignificant” difference in satisfaction of less than three points in their survey.<sup>109</sup> When specifically asked about the immigration enforcement policy, the satisfaction dips markedly, with just under 35% favorable opinions among Hispanics.<sup>110</sup>

The Phoenix experience was somewhat mixed. Positive response by the community to the new policy was indicated. Some immigrant advocates and representatives felt the immigrant community benefitted from the policy because of the

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106. National Council of La Raza, “Wealth Protection: Building the Civil Rights Agenda,” June 26, 2008, 16, [http://www.nclr.org/images/uploads/publications/56009\\_file\\_Wealth\\_Protection\\_Transcript2\\_1.pdf](http://www.nclr.org/images/uploads/publications/56009_file_Wealth_Protection_Transcript2_1.pdf).

107. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2009), 51.

108. PERF, “Police Chiefs and Sheriff’s Speak Out,” 16.

109. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2010), 126.

110. *Ibid.*, 132.

consistency it provided for interactions with undocumented individuals.<sup>111</sup> Others suggested that there was not buy-in from all officers, some of whom did not always comply with the policies requirements. Anecdotally, they related that there was fear amongst immigrants to come forward or report crime.<sup>112</sup>

It would seem that displeasure or dissatisfaction with the police gravitates to this singular issue, which, as discussed above, could have attendant biases and prejudices from both sides of the issue. But, indications are that a clear policy, properly utilized does not necessarily damage overall SLT agency credibility.

A policy implemented by an SLT agency is also scrutinized by the deputies or officers tasked with its implementation. At times policies of any nature may be deemed more or less acceptable by rank-and-file members of an agency. Law enforcement officers do not exist in a vacuum, they bring with them their own perspectives on the job, laws, policies, and enforcement activities. These perspectives certainly vary from officer to officer, and perhaps from jurisdiction to jurisdiction. The data in Prince William County experience seem to suggest that the officers of the PWCPD maintained a largely favorable view towards the policy in that agency. Overall, the view amongst the 379 officers who completed the survey felt comfortable administering the policy, felt the policy was clear, and that they had the appropriate training and skills to implement the policy.<sup>113</sup> From a philosophical perspective, officers approximately two thirds agreed or strongly agreed with the policy, with only 11% who disagreed with it in the interim report.<sup>114</sup> The basic trend remained the same in final report of 2010. Officers' opinions and responses regarding the policy indicated that only 9–10% disagreed with policy and that 92% indicated their personal beliefs would not affect the policy's

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111. Hoffmaster, et al., "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," 32.

112. Ibid.

113. Guterbock, et al., "Evaluation Study of Prince William County Police," (2009), 28.

114. Ibid., 29.

implementation.<sup>115</sup> In the PWCPD experience, for which there is tangible data, it would seem that a directed enforcement approach can be an acceptable approach to immigration enforcement amongst SLT officers and deputies.

*Efficiency*—Whether or not a directed enforcement policy adequately meets the objectives set forth is, like other facets, difficult to measure with precision. It is difficult to ascertain whether or not the expenditure of time, money, manpower and other resources in such enforcement achieved a worthwhile result. Measuring whether public safety or homeland security were improved is somewhat like trying to prove a negative. Apprehension and removal may thwart a criminal or terrorist enterprise; however, we may never know with certainty. The efficient investment of capital and enforcement resources can be somewhat ambiguous.

Arrest, incarceration and potential deportation of removable aliens is one measure to be considered. Even the most innocuous circumstance can lead to the detention and/or deportation of an alien that leads to the protection of the citizenry. In the extreme, the example of the 9/11 hijackers is evident. A more directed effort could have led to a wholly different outcome. In more commonplace examples, illegal immigrants have come to the attention of law enforcement authorities who, for a variety of reasons, did not act on their immigration status. A murder suspect, convicted in 2012, in San Francisco, for example, was in custody prior to the triple homicide for which he was convicted. He had two previous convictions as a juvenile – immigration authorities were not alerted because of city policy.<sup>116</sup>

It can be asserted then, to some degree that directed enforcement efforts that succeed in removing deportable criminal aliens are efficient and protect the community. Statistically, removal rates like those discussed in EPD’s participation in Operation Joint Effort efficiently utilized resources to apprehend and remove hundreds of immigration violators. PWCPD also encountered and arrested large numbers of illegal immigrants

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115. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2010), 43.

116. Jaxon Van Derbeken, “Slaying suspect once found sanctuary in S.F.,” San Francisco Chronicle, July 20, 2008, <http://www.sfgate.com/news/article/Slaying-suspect-once-found-sanctuary-in-S-F-3276361.php>.

according to interim and final reports. As discussed previously, the illegal immigrant population diminished in the county. In Phoenix, the police department's strategies for addressing immigration enforcement and crime are credited with marked decreases in the crime rate in both violent and property crimes.<sup>117</sup>

Making such directed enforcement efforts and cooperation with federal immigration authorities, part of everyday SLT enforcement efforts can prove efficient—particularly as officers are trained in and become more familiar with the policy and enforcement duties. The final report for Prince William County found that there was not a substantial effect on crime over all in the county, however, the policy was found to be “a reasonable way of targeting illegal immigrants who are serious offenders.”<sup>118</sup>

Mere numbers of arrests and/or removals, however, do not indicate efficient implementation by themselves. Utilization of SLT enforcement agency assets and personnel for directed enforcement is inefficient if overall public safety, response to calls for service, and other routine duties are adversely impacted. Overall rates of satisfaction of police performance in the PWCPD example remained high after the directed enforcement policy.<sup>119</sup> While satisfaction ratings may be a bit nebulous, they may be an indication that an agency and the policy are efficient in that they are not a detriment to handling other calls for service as well as maintaining a positive public perception.

*Implementation* - SLT agency policies and procedures that pertain to any aspect of enforcement should be considered and tailored in light of an agency's ability to realistically implement those policies. There can be numerous facets for consideration in directed enforcement implementation. Configuration of the agency and how it will implement such a policy is among them. An agency may wish to consider whether or not specialized units or 287(g) agreements should be a part of an overall directed

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117. Hoffmaster, et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges,” 31.

118. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2010), 81.

119. Ibid., 126–127.

enforcement unit. ICE has, however, has elected not to renew agreements for field enforcement ‘task force’ 287(g) agreements stating other initiatives are more efficient.<sup>120</sup>

Leadership of the organization is integral to implementing policies for directed enforcement. The PWCPD experience cited strong leadership that provided continuity. From the top down, the policy was “implemented with professionalism and that racial profiling would not be tolerated.”<sup>121</sup>

Officers and deputies must be adequately trained in the policy and feel comfortable in their abilities to enforce it. Training involves an investment of not only officers’ time but in material and support as well. In implementing its policy, the PWCPD devoted 4,884 officer hours in training and preparation for the policy.<sup>122</sup> This represents approximately 10 hours of training for each sworn officer. Such training can help officers to deal with immigration issues without an adverse impact on day-to-day work.<sup>123</sup>

Educating the community about a directed enforcement policy cannot be neglected. As have been seen in many demonstrations and debates concerning the illegal immigration issue, sensitivities run high on both sides of the debate. The PWCPD designed a public education effort for the implementation of its policy. The efforts goal was two-fold; to assuage fear in the immigrant community to prevent distrust of the police, and to inform the public in general as to what the police could or could not do under the policy.<sup>124</sup> Implementation without a component to inform the community would likely lead to apprehension and confusion.

It is probably safe to assert that no SLT enforcement agency is without fiscal concerns. In fact, many struggle to manage the responsibilities of routine policing in the

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120. Department of Homeland Security ICE, “FY 2012,” News Release, December 21, 2012, <http://www.ice.gov/news/releases/1212/121221washingtondc2.htm>.

121. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2010), 155.

122. Ibid., 40.

123. Ibid., 155.

124. Ibid., 41.

face of budget cutbacks.<sup>125</sup> The International Association of Chiefs of Police (IACP) expressed concern that “local police leaders face a growing set of immigration related duties in the face of scarce and narrowing resources.”<sup>126</sup> Implementation of a new policy for directed enforcement therefore must contend with costs of that implementation. Cost factors vary from agency to agency. Training, personnel hours, logistic support or booking fees are possible cost factors to consider in implementation.

In a separate publication the IACP outlined an incentive based approach to immigration enforcement related issues that would help agencies defray the costs associated. The group asserts that agencies who “agree to perform immigration enforcement activities as set forth in legislation would be eligible to receive federal assistance funds.”<sup>127</sup> Authorized funds could cover personnel, training, enforcement, and incarceration costs.<sup>128</sup> The position by IACP was published just over three years after 9/11. It is likely that available federal funding at the time was greater, and the national economic downturn was a few years off. Incentives discussed, while a boon to an SLT agency, may not materialize.

Costs of implementing and maintaining enforcement will likely be borne by the agency, municipality or jurisdiction. Over 76% of police agencies in the United States have 25 or fewer officers.<sup>129</sup> Contending with growing populations, to include immigrants, is a strain on resources for SLT agencies, particularly smaller ones. In the PWCPD experience, start-up costs were estimated at approximately \$1.3 million with annual costs at \$700–750,000.<sup>130</sup> This sustains the training, outreach, implementation,

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125. Police Executive Research Forum (PERF), “Voices from Across the Country: Local Enforcement Officials Discuss the Challenges of Immigration Enforcement,” 2012, <http://www.policeforum.org/library/immigration/VoicesfromAcrosstheCountryonImmigrationEnforcement.pdf>.

126. International Assoc. of Chiefs of Police (IACP), “Police Chiefs Guide to Immigration Issues,” July 2007, 35, <http://www.theiacp.org/Portals/0/pdfs/Publications/PoliceChiefsGuidetoImmigration.pdf>.

127. International Assoc. of Chiefs of Police (IACP), “Enforcing Immigration Law: the Role of State, Tribal and Local Law Enforcement,” 6, November 2004, <http://www.theiacp.org/Portals/0/pdfs/Publications/ImmigrationEnforcementconf.pdf>.

128. Ibid.

129. IACP, “Police Chiefs Guide,” 23.

130. Guterbock, et al., “Evaluation Study of Prince William County Police,” (2010), 56.

and logistics costs for an agency of over 500 sworn officers. Additionally, PWCPD staffed the specialized 287(g) CAU which was covered in those costs. This provides at least a ‘thumbnail’ sketch of potential costs—scalable to varying agency size.

Whether or not the fiscal burden placed on an agency is tenable for implementation of a policy is whether it detracts from ability to continue to provide other enforcement activities and services. The PWCPD example suggested that the “demands of implementing the policy have not undermined the [agency’s] ability to control crime or reduced satisfaction with other police services among most PWC residents.”<sup>131</sup>

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131. Ibid.

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## IV. NON-COOPERATION/SANCTUARY POLICY FOR ENFORCEMENT

[I]f cops are involved in ferreting out illegal immigrants, they are likely to feel “caught in the middle” between public worries about illegal immigration and what they know works best to build trust and enhance overall safety.<sup>132</sup>

### A. OVERVIEW

In many areas across the United States, state and local governments have enacted and maintain policies which prohibit employees seeking or disclosing information regarding immigration status. These policies often referred to as ‘sanctuary’ policies, affect law enforcement efforts as well, preventing citizenship status from becoming known during local law enforcement activities.<sup>133</sup> One estimate by the Immigration Policy Council (IPC) suggests:

More than 70 cities and states across the country have adopted policies that prevent police agencies from asking community residents who have not been arrested to prove their legal immigration status.<sup>134</sup>

However, the same report claims that the term “sanctuary” is incorrectly used to describe what are simply good community policing practices.<sup>135</sup> They contend that these policies establish better relationships with immigrant communities and overall ability to fight crime. Policies in some jurisdictions, however, can effectively be construed as being in violation of federal provisions of the Immigration Reform Act of 1996.<sup>136</sup> The IPC, interestingly, points to a quote from a publication by the IACP that:

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132. Doris M Provine, “Should Local Police be on the Front Lines of Immigration Enforcement?” Scholars Strategy Network, July 2013, [http://www.scholarsstrategynetwork.org/sites/default/files/ssn\\_basic\\_facts\\_provine\\_on\\_immigration\\_and\\_local\\_law\\_enforcement.pdf](http://www.scholarsstrategynetwork.org/sites/default/files/ssn_basic_facts_provine_on_immigration_and_local_law_enforcement.pdf).

133. IACP, “Police Chiefs Guide,” 42.

134. Lynn Tramonte, “Debunking the Myth of ‘Sanctuary Cities’ Community Policing Protect American Communities,” Immigration Policy Center, American Immigration Council, April 2011, 4, <http://www.immigrationpolicy.org/special-reports/debunking-myth-sanctuary-cities>.

135. Ibid., 2.

136. IACP, “Police Chief’s Guide,” 42.

Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.<sup>137</sup>

The IACP points out that in some regions, like the State of Colorado, sanctuary ordinances or laws are prohibited. Officers there must be notified in writing of their obligation to comply with the state law and federal authorities.<sup>138</sup> These contentions, back-and-forth, place SLT agencies and their management in the middle. Immigrant advocacy groups tend to prefer limited cooperation and interaction with federal authorities like ICE. The IACP maintains that until there are comprehensive federal reforms, the sanctuary policies will continue to exist. Further, law enforcement executives must “operate within the policies established by state or local governing bodies, and may have to deal with these policies even though they run afoul of federal law and policy.”<sup>139</sup> SLT enforcement efforts are part of the jurisdictional parameters set; executives and officers alike must operate within them.

## **B. SAMPLING OF AGENCIES/AUTHORITES MAINTAINING SOME LEVEL OF NON-COOPERATIVE OR “SANCTUARY” POLICIES**

### **1. Los Angeles Police Department**

The City of Los Angeles maintains the third largest police department in the United States, with nearly 10,000 sworn officers.<sup>140</sup> Since November 1979, the Los Angeles Police Department (LAPD) has operated under “Special Order 40” the subject of which is “Undocumented Aliens.”<sup>141</sup> The policy set out in this succinct order directs personnel to contact the U.S. Immigration and Naturalization Service (now ICE) only if an undocumented alien is arrested for a felony, multiple misdemeanors, or a high grade

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137. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 6.

138. IACP, “Police Chief’s Guide,” 43.

139. *Ibid.*

140. Brian A Reaves, “Local Police Departments, 2007,” U.S. Department of Justice, Bureau of Justice Statistics, December 2010, 34. <http://www.bjs.gov/content/pub/pdf/lpd07.pdf>.

141. Daryl Gates, LAPD, “Special Order 40: Undocumented Aliens,” November 27, 1979, [http://www.lapdonline.org/assets/pdf/SO\\_40.pdf](http://www.lapdonline.org/assets/pdf/SO_40.pdf).

misdemeanor.<sup>142</sup> Beyond that the policy maintains that “police service will be readily available to persons, including the undocumented alien.”<sup>143</sup> Notifications of status to ICE or other actions that are incumbent or allowed under some directed enforcement policies are not permitted under Special Order 40.

Despite its longevity, Special Order 40 remains a controversial policy in the city. Previous Chiefs William Bratton and Charlie Beck defended the policy. Bratton affirmed it strongly saying that the policy is not changing “not one word” while he was chief.<sup>144</sup> The chief reflected that the policy has worked for nearly 30 years. According to Bratton though, the LAPD cooperates with ICE and maintains a good relationship with them. The LAPD though does not “actively participate” with ICE in sweeps or enforcement activity.<sup>145</sup>

Opponents of the policy maintain that it effectively makes Los Angeles a sanctuary city, and opposes the rule of law. Attempts to overturn it have failed.<sup>146</sup> Chief Charlie Beck affirmed that he believed in Special Order 40, both in the words and the spirit of the policy. Beck said the LAPD should not be “an arm of the federal government in enforcing immigration laws specifically.”<sup>147</sup>

## **2. San Francisco Police Department**

The nearly 750,000 residents of San Francisco are served by just under 2,500 sworn officers.<sup>148</sup> The city and region is home to a diverse population, which is recognized by their law enforcement.<sup>149</sup> The San Francisco Police Department (SFPD)

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142. Ibid.

143. Ibid.

144. Jim Newton, “Special Order 40 is not changing one word,” LA Times, April 29, 2008, <http://www.latimes.com/business/la-oew-lapd29apr29,0,6000525.story>.

145. Ibid.

146. Tim Rutten, “The Enduring Wisdom of Special Order 40,” LA Times, December 23, 2009, <http://articles.latimes.com/2009/dec/23/opinion/la-oe-rutten23-2009dec23>.

147. Ibid.

148. Reaves, “Local Police Departments, 2007,” 34.

149. San Francisco PD, Mission Statement, “Mission Statement,” <http://sf-police.org/index.aspx?page=1616>.

operates under General Order (GO) 5.15, “Enforcement of Immigration Laws.” The GO makes reference to San Francisco’s ordinance as a “City of Refuge,” in San Francisco Administrative Code.<sup>150</sup> The GO makes it clear that in the performance of their daily routine duties, officers of the SFPD *shall not* ask about an individual’s immigration status. Further, officers are ordered not to enforce immigration laws or to assist (ICE) in the enforcement of immigration laws.<sup>151</sup> Officers may only back up ICE agents when “significant danger” exists for personal safety or significant property damage. The GO only makes allowances for releasing information to federal immigration authorities under specific bookings for controlled substances, or felony bookings—if there is reasonable suspicion that the person booked may be in violation of immigration laws.<sup>152</sup> The original order did not go as far as to stipulate the narcotics offenses. That was added based on a California Appellate Court ruling in October 2008 that the SFPD must “notify federal authorities” in the enumerated drug offenses.<sup>153</sup> Officers in violation of GO 5.15 are subject to discipline.

San Francisco’s Administrative Code 12H outlines the city’s policy on immigration status, officially declaring the City and County of San Francisco as “City/County of Refuge.”<sup>154</sup> The code encompasses virtually all city and county official departments and their dealings with immigrants, information, and almost complete lack of cooperation with federal authorities.

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the

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150. San Francisco PD, General Order 5.15, “Enforcement of Immigrant Laws,” December 13, 1995, <http://sf-police.org/index.aspx?page=1720>.

151. Ibid.

152. Ibid.

153. California Court of Appeal, First Appellate District, *Fonseca v. Fong*, No. CPF-07-507227, October 2008, <http://www.judicialwatch.org/documents/2008/fonseca-v-fong-appeal-decision.pdf>.

154. San Francisco Administrative Code, “Chapter 12H: Immigration Status,” <http://sfgsa.org/index.aspx?page=1069#sec12h2-1>.

immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.

The code is the authoritative document that informs the SFPD's GO 5.15. The code outlines that only when officers "become aware" of a convicted felon's potential illegal immigration status are they then permitted to cooperate with federal authorities and/or ICE. While instructions and performance of other city departments other than law enforcement are outside the scope of this research, they are germane in the sense that there is very little differentiation between what is expected of SFPD and its officers and what is expected of other departments.

### **3. Chicago Police Department**

While the actual policy for the police department is not available, and is in fact the subject of a Freedom of Information Act (FOIA) action by the interest group "Judicial Watch"<sup>155</sup> the City of Chicago has ordinances regarding citizenship and immigration status. Similar to a San Francisco's definition of itself as a "City of Refuge," Chicago has proclaimed itself a "Welcoming City" via Chapter 2-173 of the city's municipal code.<sup>156</sup>

The ordinance does not necessarily constitute policy for the Chicago Police Department (CPD), it likely informs that policy, much like San Francisco's Administrative Code section 12H.2. In section 2-173-042, the ordinance discusses law enforcement in relation to immigration.<sup>157</sup> The ordinance defines at its outset that immigration enforcement is primarily a federal responsibility. The "shall not" provisions state that no "agency or agent" shall take enforcement action solely based on immigration matters, for administrative warrants or civil matters nor honor civil immigration detainers. It precludes ICE's access to a detained person, use of agency facilities, and communication with ICE regarding custody of an individual without

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155. Circuit Court of Cook County, Illinois, *Judicial Watch v. Chicago Police Department*, <http://www.judicialwatch.org/archive/2006/chicagopd.pdf>.

156. Municipal Code of Chicago, Chpt. 2-173, "Welcoming City Ordinance," March 29, 2006. [http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago\\_il/municipalcodeofchicago?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:chicago\\_il](http://www.amlegal.com/nxt/gateway.dll/Illinois/chicago_il/municipalcodeofchicago?f=templates$fn=default.htm$3.0$vid=amlegal:chicago_il).

157. Ibid.

legitimate law enforcement purpose.<sup>158</sup> Thereby, it effectively obstructs federal involvement unless there is “legitimate law enforcement purpose” which remains undefined.

The only instances where the code section does not apply is in the event of criminal warrant, felony conviction or pending, or is a validated gang member.<sup>159</sup> Absent those criteria, and as a “Welcoming City,” there is little if any cooperation in immigration enforcement.

#### **4. Milwaukee Police Department**

The Milwaukee Police Department (MPD) maintains an immigration policy outlined in 3/130.30 of their General Orders.<sup>160</sup> One of the policies stated goals is to rid “the city’s streets of violent offenders regardless of whether such offenders are in the United States legally or illegally.” It further states that “proactive immigration enforcement by local police” is detrimental to the police mission and may deter some from participating in their “civic obligation” to assist the police.<sup>161</sup>

On that basis, the MPD maintains that the nation’s immigration laws should be enforced by the federal government. The order stipulates that the MPD *shall not* inquire into the immigration status of individuals encountered during police operations or undertake immigration related investigations. It limits the department’s cooperation with federal authorities to serious situations where there is a public threat, and by request.<sup>162</sup>

Somewhat like the SFPD, the MPD makes it a “shall not” concerning advisement to federal immigration officials of the “whereabouts or behavior” of potential or identified illegal immigrants. The only exceptions are for felony arrests, misdemeanor arrests involving a dangerous weapon, human/undocumented persons trafficking,

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158. Ibid.

159. Ibid.

160. PERF, “Critical Issues in Policing Series,” Appendix L, April 2008, 105.  
[http://www.policeforum.org/library/immigration/Immigration\\_6c.pdf](http://www.policeforum.org/library/immigration/Immigration_6c.pdf).

161. Ibid.

162. Ibid., 106.

terrorism or subversive activity arrests, street gangs, or previously deported felons.<sup>163</sup> Otherwise, no notification or communication to ICE or any other federal authority is authorized.

### **5. Virginia Beach Police Department**

In the agency's Operational General Order 11.10, Enforcement of Immigration Laws, the Virginia Beach Police Department (VBDP) describes a policy remarkably similar to that of Milwaukee (this is not unusual as agencies often use similar sources or model policies like those offered by the IACP).<sup>164</sup> Officers in the VBDP have similar restrictions on their interactions with subjects they encounter and are admonished that they shall not inquire about citizenship status, and may inform federal immigration agencies only under the same set of arrest conviction criteria.<sup>165</sup>

### **6. Cities of Talent, Oregon, Pittsburgh, Pennsylvania, and Takoma Park, Maryland**

Pittsburgh and Talent are separated by a great deal of geography, population, climate and numerous other factors. However, each municipality shares a very similar approach and philosophy in regards to immigration enforcement.

Talent is a small community of about 6500 that is between the larger cities of Medford and Ashland, Oregon. The bucolic small town, however, adopted a fairly sweeping resolution in April 2003 called the "Resolution to Protect Civil Liberties," No. 03-642-R.<sup>166</sup> The measure is very much a condemnation of perceived infringement on civil liberties from federal "anti-terrorism policies" and the USA PATRIOT Act in general. The resolution sees threats to civil liberties and rights from; indefinite incarceration of non-citizens, secret searches by federal agents, FBI surveillance

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163. Ibid.

164. International Association of Chiefs of Police (IACP), National Law Enforcement Policy Center, <http://www.theiacp.org/PublicationsGuides/ModelPolicy/tabid/135/Default.aspx>, While the policies examples outlined in this chapter are often similar, they do not necessarily derive from this source (IACP). This is merely offered as a sample resource, agencies and executives rely on to help inform policy matters.

165. PERF, "Critical Issues in Policing Series," Appendix L, 84.

166. American Civil Liberties Union (ACLU) "Talent, OR City Resolution," April 4, 2003, <http://www.aclu.org/national-security/talent-or-city-council-resolution>.

expansions, wire-tapping measures, and several other areas.<sup>167</sup> The resolution issues directives to the police department in several different areas based on the above perceived grievances. The police are to “refrain from participating in the enforcement of federal immigration laws” indicating those are the responsibility of the federal government.<sup>168</sup> The resolution cites Oregon’s state law 181.850, which prohibits any SLT enforcement agency to use moneys, equipment, or personnel in “detecting or apprehending” subjects who are merely immigration violators.<sup>169</sup>

Pittsburgh, is a city of over 300,000 in Allegheny County, and is part of a metropolitan area that boasts 2.3 million residents.<sup>170</sup> The city adopted a bill in April of 2004 remarkably similar to that of the small town of Talent, Oregon. Bill No. 2004–0295 “Affirms its strong support” for constitutional protections and in opposition of federal measures that infringe on civil liberties; and for rights of immigrants opposing any activity that might place immigrants under scrutiny or subject to enforcement action based on national origin.<sup>171</sup>

Again, like Talent, the measure provides directives to its police department. It is perhaps, somewhat stronger in the admonishment stating that the police should not participate in immigration enforcement because they are “**solely the responsibility of the federal government.**”<sup>172</sup> Further in the document, federal policies like the USA PATRIOT Act and Homeland Security Act, as well related executive orders, regulations and actions are said to, “threaten fundamental rights and liberties.” It states that SLT agency participation in enforcement of immigration law drives “a wedge between immigrant communities and the police.”<sup>173</sup>

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167. Ibid.

168. Ibid.

169. Oregon Revised Statutes, Chpt. 181, <http://www.leg.state.or.us/ors/181.html>.

170. City of Pittsburgh, Pittsburgh Links, [http://www.city.pittsburgh.pa.us/main/html/pittsburgh\\_links.html](http://www.city.pittsburgh.pa.us/main/html/pittsburgh_links.html).

171. City of Pittsburgh, Bill No. 2004–0295, [http://observatoriocolef.org/\\_admin/documentos/Pittsburgh%202004.pdf](http://observatoriocolef.org/_admin/documentos/Pittsburgh%202004.pdf).

172. Ibid.

173. Ibid.

In Maryland, near Washington, DC, lies the small community of Takoma Park, Maryland; home to about 17,000 people.<sup>174</sup> In October 2007, the Mayor and six-member Council adopted Ordinance No. 2007–58 which unabashedly reaffirms the city’s status as a sanctuary city.<sup>175</sup>

The ordinance is very similar in its language to those in Pittsburgh and Talent. It states that national security objectives and the preservation of liberty and civil rights do not necessarily need to conflict.<sup>176</sup> However, its primary focus is on immigration enforcement and prohibiting local involvement. The prohibition extends to both civil and *criminal* immigration violations in both section A & B of City Code 9.04.010, the code affected by the ordinance.<sup>177</sup> Ostensibly police officers are directed not to ask about citizenship and to ignore even criminal federal warrants or immigration violations they might encounter. Chief of Police in Takoma Park, Ronald Ricucci said

We do not check anything to do with immigrant status. If we get an ICE hit, we can go no further. We cannot talk with ICE, we cannot cooperate with ICE. We’re going to continue to do our job; it just handcuffs us.<sup>178</sup>

Resolutions, bills and ordinances such as these, and similar ones elsewhere, are expansive and touch on many areas outside immigration related issues that are outside the scope of this research. However, they indicate what seems to be an even stronger statement of refusal to engage SLT agencies in cooperation with federal authorities and/or in immigration enforcement.

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174. The City of Takoma Park, About Takoma Park, <http://www.takomaparkmd.gov/about-takoma-park>.

175. City of Takoma Park, Maryland, Ordinance No. 2007–58, “Reaffirming and Strengthening the City of Takoma Park’s Immigration Sanctuary Law,” [http://observatoriocolef.org/\\_admin/documentos/takoma%20park%20ordinance%202007-58.pdf](http://observatoriocolef.org/_admin/documentos/takoma%20park%20ordinance%202007-58.pdf).

176. Ibid.

177. Ibid.

178. PERF, “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak Out On Local Immigration Enforcement,” 6–7.

## C. EVALUATIVE CRITERIA—NON-COOPERATIVE OR “SANCTUARY” POLICIES

Just as with directed enforcement policies, effects of non-cooperation or sanctuary policies or procedure options are difficult to measure—perhaps more difficult. Examining results of jurisdictions applying such policies is much like proving a negative. Is a ‘non-enforcement approach’ successful?

Anecdotally, proponents of sanctuary policies claim directed enforcement strategy by SLT agencies “undermines public safety,” citing numerous law enforcement officials, immigrant advocates, immigrants and others.<sup>179</sup> This potential undermining of public safety is commonly referred to as a “chilling effect” throughout much of the literature and discussions, like those amongst police chiefs.<sup>180</sup> There is, unfortunately, very little objective data in this regard. The Prince William County experience, and subsequent surveys and reports, measures components which are somewhat similar; rates of reporting crime. These are singular studies; however, in that they measure one particular jurisdictional experience after its policy implementation.

Advocates for SLT non-cooperation in immigration enforcement assert that depictions of illegal immigrants as dangerous criminals, cited as a need for SLT enforcement, are not accurate. These claims are “mythical [and] usually based on rhetorical sleight of hand.”<sup>181</sup> Directed enforcement policies are claimed to be ineffective on fighting crime because immigrants are less likely than native-born residents to commit crimes or be in jail or prison.<sup>182</sup> The UCR data and other sources are compelling on their face but do not specifically address the potential chilling effect. If such a chilling effect exists, it might explain a low crime rate in communities with a high immigrant population and directed enforcement policy.

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179. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 3.

180. PERF, “Critical Issues in Policing Series,” 15.

181. Immigration Policy Center, American Immigration Council, “From Anecdotes to Evidence: Setting the Record Straight on Immigrants and Crime,” July 2013, <http://www.immigrationpolicy.org/just-facts/anecdotes-evidence-setting-record-straight-immigrants-and-crime>.

182. Ibid.

Crime rates have fallen during times of “dramatically” increasing size of immigrant populations according to FBI data cited by advocate reports.<sup>183</sup> Conversely then, communities where immigrant population noticeably decreases (as has occurred in the PWC example) should see some indication of an increase in crime rates. In PWC it does not seem to have occurred, however, there is a dearth of information or studies to cite empirical evidence specifically related to policy—directed or non-cooperation. This makes evaluation measures considerably more difficult.

Effectiveness—SLT agencies practicing directed enforcement strategies generally have data on which to base some measure of effectiveness; arrest rates, criminal alien removal, crime trends, etc. Sanctuary policy or non-cooperation jurisdictions, conversely, do not have data available to indicate how many enforcement actions they did not take. Trying to prove the negative as discussed above. Community members are not asked, and it is not reported in such communities (by policy) their immigration status. So it is difficult to determine potentially how many undocumented might be in a given sanctuary community or if they’ve had contact with police or any other official agency for that matter (health, welfare).

There are a fairly large number of jurisdictions which have adopted some level of non-cooperation policy. In one estimate:

More than 70 cities and states across the country have adopted policies that prevent police agencies from asking community residents who have not been arrested to prove their legal immigration status.<sup>184</sup>

One can assume then, that both philosophically and/or politically these jurisdictions find merit in the effectiveness of such policies for their respective law enforcement agencies. However, it is asserted that their effectiveness is based also on common police practice:

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183. Ibid.

184. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 4.

Based on the tenets of community policing, these policies make it safe for immigrant crime victims and witnesses to report criminals to the police and help put [foreign born criminals] behind bars. Critics claim that these cities and states provide “sanctuary” to undocumented immigrants, but research shows that the opposite is true. Crime experts, including hundreds of local police officers, have found that cities with community policing policies do work closely with DHS when they have actual criminals in custody. Moreover, they have built important bridges to immigrant communities that enhance their ability to fight crime and protect all residents.<sup>185</sup>

Much of the discussion and material regarding non-cooperation policy carries a similar message. Gaining trust, an important facet of police work to be sure, is a given in much of the dialog concerning sanctuary policies. San Jose, California officers are “ordered not to investigate someone’s immigration status even during arrests;” citing attempts to improve “frayed relationship[s] with immigrant communities.”<sup>186</sup> In Minneapolis, Minnesota the police use the sanctuary policy to provide a basis to “establish trust by building relationships.”<sup>187</sup> And in Oregon, a state with a sanctuary policy, the Portland Police have their own similar sanctuary policy that purportedly develops “trust in immigrant communities to insure public safety for all residents.”<sup>188</sup>

The goal is fairly clear, and, on its face, not problematic—gaining trust to establish cooperation to make the entire community safer.<sup>189</sup> However, from an empirical standpoint, trust is hard to gauge. Therefore, it is difficult to ascertain the effectiveness of non-cooperation/sanctuary policies. Police officers need the community’s support and input, which is almost beyond question. Whether it has gained that support from these policies is not clear.

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185. Ibid.

186. Bill O Hing, UC Irvine Law Review, “Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy,” Vol. 2 No. 1, July 2013, 300, <http://www.law.uci.edu/lawreview/vol2/no1/hing.pdf>.

187. Ibid., 301.

188. Ibid., 302.

189. Ibid., 303.

There are certainly those who contend that trust is not gained through sanctuary policies. Then Collier County, Florida Sheriff Don Hunter said in August 2007, that “trust is not inspired in the idea that certain crimes will not be enforced by law enforcement.”<sup>190</sup> Sheriff Hunter found the idea of the “chilling effect” intuitively appealing but added:

Those who allege the effect carry the burden that such an effect exists. How would we go about proving the negative, that crime will not be reported if the law is enforced? We are unlikely to prove that a specific crime will not be reported if we enforce immigration law just as we cannot demonstrate that we prevented a specific crime in our most recent patrol tour.<sup>191</sup>

Sheriff Hunter relates that crime statistics for 2005 would indicate that in general about 58% of all crime was not reported according to the UCR. Most jurisdictions that promote non-cooperation/sanctuary policies had them in that year. Based on assumptions under these statistics, Hunter contends that though all crime victims are a priority, we “lose very little by the theoretical chilling of crime reporting” by undocumented immigrants. They (the undocumented) are, by extrapolation a “small fraction” of victims of unreported crime – stressing the building of trust through predictable enforcement.<sup>192</sup>

*Legality*—The question of the legality of non-cooperation/sanctuary policies centers primarily around two pieces of federal legislation from 1996; the “Illegal Immigration Reform and Immigrant Responsibility Act”<sup>193</sup> and the “Personal Responsibility and Work Opportunity Reconciliation Act.”<sup>194</sup> The acts established public laws, respectively, 8 USC § 1373 and 8 USC § 1644. These codes are fairly similar in that they make it unlawful to restrict the provision of information regarding immigration

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190. PERF, “Critical Issues in Policing Series,” Appendix M, April 2008, 109. [http://www.policeforum.org/library/immigration/Immigration\\_6c.pdf](http://www.policeforum.org/library/immigration/Immigration_6c.pdf).

191. *Ibid.*, 110.

192. *Ibid.*, 112.

193. 104th Congress, “Illegal Immigration Reform and Immigrant Responsibility Act,” September 1996, <http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-10948.html#0-0-0-1429>.

194. 104th Congress, “Personal Responsibility and Work Opportunity Reconciliation Act,” <http://www.gpo.gov/fdsys/pkg/PLAW-104publ193/html/PLAW-104publ193.htm>.

status from state or local government entities, or their employees, to federal immigration authorities.<sup>195</sup> §1644 states:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.<sup>196</sup>

USC § 1373 adds provisions that make it unlawful to disallow maintaining information about immigration status or exchanging that information with federal authorities or state or local government agencies. Further, it mandates that federal immigration authorities will respond to lawful inquiries by SLT agencies about immigration status.<sup>197</sup>

The acts and subsequent laws are clearly an attempt to establish a reciprocal exchange of information between federal authorities and SLT agencies and governments. Interference with such an information exchange is, by these measures, unlawful. But what if the information is not captured and ostensibly does not exist at the SLT level? That is very much at the core of sanctuary policies. Sanctuary/non-cooperation advocates point out, “the laws did not address policies that prohibit state and local officials from acquiring that information in the first place, and they did not affirmatively require agencies to ask the immigration status” of offenders.<sup>198</sup>

Many sanctuary and non-cooperation policies, like some of those outlined above are principally directives *not* to gather immigration information. Generally when it is allowed, it is only under limited conditions like felony arrests, arrests involving a deadly weapon, human trafficking or other stipulations.<sup>199</sup> Routine enforcement and a myriad of

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195. Title 8, USC 1644 & 1373, <http://www.law.cornell.edu/uscode/text/8>.

196. Ibid., subsection 1644.

197. Ibid., subsection 1373.

198. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 10.

199. PERF, “Critical Issues in Policing Series,” Appendix L, April 2008—conditions discussed in Milwaukee PD policy. Similar conditions exist in other agencies’ policies as well.

other government activities are directed not to expend resources to gain immigration status information. If it is not gathered, it cannot be shared.

Still other non-cooperation efforts, like California's effort, originally called the TRUST act (Transparency and Responsibility Using State Tools), do not address information sharing *per se*, but attempt to limit the scope cooperation will take.<sup>200</sup> The measure sets parameters for California's law enforcement agencies to cooperate with the Secure Communities program. Only current or previous convictions for felonies and certain enumerated crime categories would allow an agency to honor a federal immigration detainer as part of Secure Communities.<sup>201</sup> ICE itself describes the detainees as a notice that it intends to take custody of an individual, however, it is a "request" that an agency retain custody until it does so.<sup>202</sup> So it remains murky whether placing limitations for honoring detainees faces legal challenge. Releasing the subject of a detainer would seem to place the liability for doing so on an SLT agency or the state or jurisdiction applying such a regulation.

*Acceptability*—Interestingly there, at least in terms of the designation of "sanctuary" some disagreement even among those who would advocate for little or no involvement of SLT agencies in immigration enforcement. San Francisco highlights its sanctuary, or "City of Refuge" status, as being in opposition to "repressive immigration proposals in Congress."<sup>203</sup> The city also publishes a brochure highlighting itself as a sanctuary city.<sup>204</sup> The brochure assures readers that employees "may not" help ICE.<sup>205</sup> Other jurisdictions discussed above, also embrace the ideals of sanctuary and proudly use the term.

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200. Amiano, "AB 1081."

201. *Ibid.*

202. Department of Homeland Security ICE, "Detainers: Frequently Asked Questions," <http://www.ice.dhs.gov/news/library/factsheets/detainer-faqs.htm>.

203. City of San Francisco, "Sanctuary Ordinance," <http://sfgsa.org/index.aspx?page=1067>.

204. City of San Francisco, "San Francisco: A Sanctuary City," <http://sfgsa.org/Modules/ShowDocument.aspx?documentid=1811>.

205. *Ibid.*

However, others distance themselves from the term, saying it is inaccurate. The policies dubbed ‘sanctuary’ are really just sound community policing strategies.<sup>206</sup> It is asserted that no sanctuary is given under these community policing strategies, and that the real sanctuary is found in jurisdictions in which SLT agencies actively participate in immigration enforcement.<sup>207</sup> This could be explained away as a purely semantic discussion about what sanctuary means, however, the acceptability of the designation seems in question, even from those who advocate for non-cooperation policies.

Local policies concerning immigration enforcement are a matter for local decision, according to the IACP.<sup>208</sup> According to that tenet, their acceptability for law enforcement officials and officers would be driven by local directives. While personal philosophies may vary amongst individual, it would not be an unacceptable position overall according to the IACP. Others assert that SLT agencies “around the country support [these] policies” because they encourage immigrant support of the police and the maintenance of a positive relationship with immigrant communities.<sup>209</sup>

Immigrants’ rights and other advocacy groups, not surprisingly, espouse and support non-cooperation enforcement policies. Groups like the National Council of La Raza (NCLR) discuss the policies as “critically important” protections of immigrants, enhancing police efforts and the willingness of immigrants to cooperate with them.<sup>210</sup> This opinion of sanctuary policies is shared by other prominent groups like the American Immigration Lawyers Association (AILA), National Immigration Law Center (NILC), and others, who publish similar opinions and work to proliferate those views.

Citizens’ views on non-cooperation or sanctuary policies vary. Despite some communities, regions or even states, espousing clear policies limiting or forbidding SLT agencies’ cooperation with federal authorities, individual citizens, advocacy groups, and

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206. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 3.

207. Ibid.

208. International Assoc. of Chiefs of Police “Police Chiefs Guide to Immigration Issues,” 37.

209. Tramonte, “Debunking the Myth of ‘Sanctuary Cities,’” 3.

210. National Council of La Raza, “State and Local Police Enforcement of Immigration Laws: a Toolkit for Advocates,” March 2006, 53, [www.nilc.org/document.html?id=7](http://www.nilc.org/document.html?id=7).

others may suffer under laws, ordinances and policies with which they may not agree. In San Francisco, the case that amended the SFPD's policy, requiring enforcement of immigration in specified drug offenses, was filed with a private citizen as the plaintiff.<sup>211</sup> This is likely reflective of divergent opinions as to what is acceptable for SLT agencies and policies on immigration enforcement.

Also expressive of divergent thought on SLT agencies and jurisdictions adoption of non-cooperation/sanctuary policies, are efforts to exact a fiscal price for them from federal legislators. A 2012 measure attached to a spending bill in the U.S. House of Representatives, sought to deny funds to "sanctuary cities and any communities that fail to enforce immigration laws."<sup>212</sup> The measure's sponsor, Representative Joe Walsh said:

If cities and states refuse to enforce the immigration laws that are on the books, they will no longer receive taxpayer funds to do so.

Clearly there is an undercurrent, even at the national level, that finds a lack of cooperation with federal authorities in immigration enforcement as unacceptable – even if the measure is unsuccessful. Others seem to think that no city "refuses to enforce immigration law"<sup>213</sup> indicating that sanctuary policies are acceptable in that they do not preclude enforcement activities.

*Efficiency*—A jurisdiction and SLT agencies maintaining non-cooperation/sanctuary policies would not seem to undermine efficiency, at least internally. Enforcement efforts directed to *not* ask about immigration status except, perhaps, under limited situations, would free officers and deputies to focus on efforts deemed more appropriate to their roles and the objectives of their agencies. Non-enforcement or limited enforcement is efficient from a logistical standpoint (dismissing valuation judgments of the policy)—resources are available elsewhere. Resources and funds could become less available if efforts to withhold funding were put in place.

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211. California Court of Appeal, First Appellate District, "Fonseca v. Fong,"

212. Richard Simon, "House OKs funds to states for incarcerating illegal immigrants," L.A. Times, May 10, 2012, <http://articles.latimes.com/2012/may/10/nation/la-na-nn-illegal-immigrants-incarceration-20120510>.

213. *Ibid.*

More broadly, however, it is difficult to discern whether or not non-cooperation/sanctuary policies are efficient to the law enforcement mission and the homeland security mission. If, as has been asserted, SLT law enforcement represents a significant force multiplier in homeland security efforts, then perhaps ignoring all but the most serious and egregious immigration violations is counterproductive and inefficient. Clearly there are “hundreds of thousands of law enforcement officers” patrolling every community every day.<sup>214</sup> There are nearly 800,000 officers in approximately 18,000 SLT agencies.<sup>215</sup> It would seem that a level of vigilance and observation is impossible to achieve outside the enlistment of those assets, for homeland security concerns, to include immigration enforcement. It may be far less efficient to try to implement meaningful enforcement with the 20,000 or so that ICE employs – who are spread out amongst detention, deportation, investigations, enforcement, etc., across the country.<sup>216</sup> The level of efficiency of policies of non-cooperation or sanctuary varies depending upon what is specifically being measured. It would seem inefficient nationally and perhaps as a homeland security effort, not to utilize at some level, the enforcement assets that exist in SLT agencies nationwide.

*Implementation*—As previously discussed, SLT agencies’ ability to implement a given enforcement policy should be a consideration in its formulation. Non-cooperation/sanctuary policies more closely resemble acts of omission than affirmative procedures. SLT officers and deputies are instructed *not* to collect information, *not* to consider immigration status, etc., except, perhaps, under very specific situations. It is, therefore, difficult to assess implementation. Much like proving a negative, determining successful implementation criteria of a policy for something officers and deputies *would not do* is problematic.

Implementing procedural limitations or denying officers’ and deputies’ ability to gain immigration information will likely be shown as an impact in other areas. In the extreme, from a homeland security standpoint, lack of information about immigration

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214. Edwards, “Officers Need Backup,” 6.

215. Reaves, “Local Police Departments, 2007,” 2.

216. Department of Homeland Security ICE, “Occupations.”

status could lead to oversight as discussed in 9/11 Commission's report about the plots hijackers. Many of them had contact with officers during low-level enforcement actions (usually vehicle stops), while immigration violators at some level. Other serious offenders, with immigration status violations, could similarly be contacted during routine law enforcement duties - human traffickers, drug runners, members of violent gangs. Implementing non-cooperation policies must take into account at some level the potential missed opportunities for law enforcement action.

Law enforcement has been impacted itself by deportable aliens being released from custody, with no check or verification of immigration status. The Scottsdale Arizona Police Department lost Officer Nick Erfle in 2006 in a shooting with Erik Jovani Martinez—a deportable alien the agency had in custody approximately four months earlier.<sup>217</sup> The agency had no policy of directed enforcement or cooperation with federal immigration authorities, and no attempt to remove Martinez was made. Scottsdale implemented a policy of checking immigration status of arrestees after the shooting.

In any case, it is possible, even likely, that with illegal immigrants in the United States exceeding 11 million, those who have criminal tendencies or intent would commit crimes before SLT agencies were ever aware of their presence. Some point to examples like the shooting of Officer Erfle as tragic, but somewhat anecdotal. Even with the strictest enforcement, “career criminals” would get through.<sup>218</sup> In Erfle’s case, it is discussed that he died because his killer, Martinez, was a violent criminal, not because he was an illegal alien.<sup>219</sup> The underlying logic being that stricter enforcement is not necessarily a remedy and non-cooperation policies are not to blame.

SLT agencies and officers have documented and regulated criteria for taking enforcement action. Investigating, developing probable cause, receipt of an arrest warrant, discovery of evidence, etc., these are all “tools in an officer’s toolbox.” Non-

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217. Carl Sowers, “Scottsdale Police Logging Immigration Status,” The Arizona Republic, December 23, 2007, [http://www.azcentral.com/news/articles/1223immigration1223.html?nclick\\_check=1](http://www.azcentral.com/news/articles/1223immigration1223.html?nclick_check=1).

218. Edward J. Montini, “Weak Border Enforcement Didn’t Cause Officers Death,” The Arizona Republic, September 20, 2007, <http://www.azcentral.com/news/columns/articles/0920montini0920.html>.

219. Ibid.

cooperation and sanctuary policies allow the “tool” of immigration violations to be used only in rare instances, if at all. They maintain the implementation of these policies protects and values their respective agencies relationships with immigrant communities and community policing efforts over strict enforcement. It is likely they would be cost-neutral fiscally, but impacts could be felt in other ways.

## **V. COLLABORATIVE/CONSENSUS POLICY FOR IMMIGRATION ENFORCEMENT**

It is imperative that more information be gathered about the nature of challenges facing local police in immigration issues so that the police and community can work together more effectively.

—Dr. Paul Lewis<sup>220</sup>

### **A. OVERVIEW**

Policy seeking to find consensus or collaborative strategy is, at best, difficult to find. SLT agencies with immigration policies generally adopted either some level of directed enforcement or a non-cooperative policy. According to a 2008 study by Arizona State University of 237 law enforcement executives, twenty percent describe their government and agency has a “don’t ask/don’t tell or sanctuary” policy, while twenty nine percent indicate a directed enforcement policy that takes some level of cooperation or proactive role.<sup>221</sup> The same study said that fifty-one percent of the executives surveyed have no policy, written or unwritten, regarding officers’ dealings with immigrants.<sup>222</sup> SLT agency heads have received little guidance at any level. The issue is very controversial, which often leads to the lack of policy in most agencies.<sup>223</sup>

So policy seems to be an either-or proposition. SLT agencies and their respective jurisdictions who have not adopted a proactive or non-cooperative strategy, have adopted no policy at all. An example of an agency that did attempt to reach a policy based on the consensus of interested parties, through a collaborative process is Mesa, Arizona. In January of 2009, then Police Chief, George Gascón published Special Order 2009–01, a

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220. Police Executives Research Forum (PERF), Newsletter, Subject To Debate, “Immigration Survey Shows Local Police ‘Are at Early Stage’ in Developing Policies,” Vol. 23, No. 7 July 2009, 3, <http://www.policeforum.org/library/?FolderPath=/library/subject-to-debate/2009/#documents>.

221. Ibid.

222. Scott H. Decker, “Immigration and Local Policing: Results from a National Survey of Law Enforcement Executives,” Arizona State University, June 2008, 7, <http://ccj.asu.edu/about-us/research/immigration-research-section/current-project/immigration-and-local-policing-results-from-a-national-survey-of-law-enforcement-executives/view/>.

223. Provine, “Should Local Police be on the Front Lines of Immigration Enforcement?” 2.

protocol for immigration enforcement in Mesa.<sup>224</sup> The special order was changed slightly as an outgrowth of Arizona' SB 1070 requirements, by subsequent Chief, Frank Milstead, in FLD 441.<sup>225</sup> The effort for arriving at Special Order 2009–01 was unique in light of the usual dichotomy on the issue in general.

## **B. COLLABORATIVE-CONSENSUS APPROACH**

### **1. Mesa Police Department**

The city of Mesa has a population of approximately 478,000. Maricopa County, in which Mesa is located, has a population of just under 4 million – of whom it is estimated, nine percent is undocumented (around 360,000 people).<sup>226</sup> Mesa's Police Department (MPD) consists of approximately 800 sworn officers, sharing jurisdiction with the Maricopa County Sheriff's Office (MCSO). In the past, the MPD had been criticized by some for lack of immigration enforcement.<sup>227</sup>

In 2006, George Gascón was appointed Chief of Police of Mesa. The immigration issue then, as now, was contentious. Some felt the city and MPD maintained what amounted to sanctuary policies. Among immigrant communities, there was generally a feeling of “suspicion and mistrust.”<sup>228</sup> Gascón had to balance both sides of the issue—those who sought stricter enforcement of immigration laws and the risk of damaging trust with the immigrant population, particularly those who were victims and/or witnesses to crime.<sup>229</sup>

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224. Mesa Police Department, “Special Order 2009–01,” January 2009, <http://www.mesaaz.gov/jobs/PDF/ImmEnfProtocol.pdf>.

225. Mesa Police Department, Field Manual FLD 441, “Immigration and Customs Enforcement Protocol,” March 1, 2011, <http://www.azcentral.com/search/index.php?aff=1100&cx=015840973018584549539%3A4mugrvjtm6k&ct=FORID%3A9&ie=UTF-8&q=sb+1070+mesa+protocol>.

226. Hoffmaster, et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges,” 37.

227. Ibid., 38.

228. Ibid., 40.

229. Ibid., 41.

In order to balance the desire for stricter enforcement and the fear of disenfranchising immigrant communities, Gascón sought to apply factual information in the discussion. To that end, each of the city's five district police stations held community forums and established advisory groups to identify priorities and establish better communications.<sup>230</sup> The effort was lauded by one of the forums, the Hispanic Advisory Forum, as the promotion of "transparency in police operations and decision-making."<sup>231</sup>

Gascón sought input from diverse groups in relation to the protocol. In addition to the advisory groups, he approached other community groups, city officials, city attorney's office, police unions and police focus groups.<sup>232</sup> The entire process took place over the course of nearly a year, and was ultimately completed in late 2008. Training in the policy was provided by MPD officials to not only officers, but advisory groups, the news media and others. References and resources were provided for officers in the field for quick review for situations on the street. Significant effort was made for both input for the policy and understanding by the community.<sup>233</sup>

The resulting protocol instructed that adults arrested (and juveniles with certain felony charges) *shall* be asked about immigration status. Immigration violations *shall* be documented in a report and ICE *shall* be contacted. Those contacted for lesser citable offenses *may* be asked. Those not to be asked are, victims, witnesses, juveniles (other than above), traffic violators, those seeking medical care, and those involved in volunteer activities like neighborhood watch or citizen's academies.<sup>234</sup>

City officials, to include the Mayor, Scott Smith, recognized that it was important the result be considered "city policy" and not solely a responsibility of the MPD. To that effect, it was enacted by the city, not merely adopted as internal policy.<sup>235</sup> Smith indicated that Mesa was trying to strike a balance between immigration enforcement and

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230. Ibid.

231. Ibid., 42.

232. Ibid.

233. Ibid.

234. Mesa Police Department, "Special Order 2009-01."

235. Hoffmaster, et al., "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," 43.

providing safety and police services for all of the city's residents. He admitted, however, that this was "an intensely political issue, we have to recognize we can't change everyone's mind on the issue."<sup>236</sup>

Special Order 2009–01 attempts to straddle the issue to a degree. It does not forbid officers from consideration of immigration status of individuals with whom they come in contact. The order allowed assessment for individuals arrested, and prescribed actions for those deemed to be immigration violators. It makes clear distinction between civil and criminal status offenses, and prevented officers from concerning themselves with immigration status of crime victims, witnesses, and juveniles (unless serious offenders).<sup>237</sup> As discussed previously, Special Order 2009–01 was superseded by MPD policy FLD 441. However, the most of the principles of the special order were kept intact, changing only the preclusion of asking immigration status of crime victims, witnesses and juveniles.<sup>238</sup> In light of this change, driven by SB 1070 requirements, Chief Milstead met with many of the same community groups consulted in adoption of Special Order 2009–01. His efforts were aimed at reassuring all members of the community of the MPD's focus on safety and well-being of those in Mesa.<sup>239</sup>

Special Order 2009–01 reflected an effort to address concerns from all sides of the issue. It sought to join immigration enforcement efforts by MPD's officers, with protections for community policing efforts and relationships with the entire community, to include the immigrant community. Much of Special Order 2009–01 appears somewhat similar to other enforcement efforts. However, in its development, preparation and implementation, it was different than many other efforts.

While outreach to community groups in relation to police activities and policies is not entirely new, efforts of that type typically take place after a policy's adoption. SLT agencies generally find themselves explaining and educating the public about their

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236. Ibid.

237. Mesa Police Department, "Special Order 2009–01."

238. Mesa Police Department, Field Manual FLD 441, "Immigration and Customs Enforcement Protocol."

239. Hoffmaster, et al., "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges," 47.

enforcement activities and existing policies. Mesa, instead, spent a year working with many divergent groups to come up with the policy. Individual citizen forums, city leaders, legal experts, the media and police officer groups all had a part in formulating the protocol, rather than simply hearing about it post-implementation.

Beyond that, however, there was a concerted effort to train not only officers in the protocol, but the same interest groups were included as well. The efforts at training and educating are ongoing. The MPD is involved in continuous outreach to what is often a very transient population.<sup>240</sup> Chief Gascón and the MPD sought transparency in the protocol and all facets of its implementation. Now District Attorney of San Francisco, Gascón still describes the efforts in Mesa as working “side by side with community groups and civil rights organizations to foster a sense of trust between the Latino community and Mesa Police.”<sup>241</sup>

It is as much in the way the MPD reached its protocol in Special Order 2009–01 and the efforts surrounding it, as the policy itself that set it apart from other policies discussed. It is one of the few that have sought to build consensus through ongoing collaboration of interested groups.

### **C. EVALUATIVE CRITERIA—COLLABORATIVE-CONSENSUS POLICY APPROACH**

As with both directed enforcement efforts as well as non-cooperative policies, evaluating a collaborative policy’s effectiveness, like that in Mesa, is somewhat difficult. Objective data is not readily available to assess some of the criteria. There are not targeted studies following the implementation, and performance data (arrests, crime rates, trends, etc) may not specifically reflect policy measures exclusively.

Additionally, there are very few efforts at SLT immigration policy that reflect a consensus approach. As the Arizona State University research discusses, policies tend to reflect either a directed enforcement philosophy or a non-cooperative one. Examining

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240. *Ibid.*, 42.

241. George Gascón, CNN Opinion, “Why Cops Should Back Immigration Enforcement,” June 19, 2013, <http://www.cnn.com/2013/06/19/opinion/gascon-immigration-policing>.

collaborative policy efforts then in the SLT immigration arena specifically does not provide a wealth of resources. However, in examining both the policy that exists as well as processes to arrive at similar policy, it is possible to glean salient information.

*Effectiveness*—One of the outgrowths of taking a collaborative approach in policy development is the residual benefit of leveraging relationships forged in that process. Day-to-day enforcement efforts related to policy (or perhaps even unrelated) are enhanced by similar levels of cooperation and integrative thought. MPD employed Special Order 2009–01 in immigration relation enforcement, using similar collaborative efforts in an issue the city faced in day labor hiring sites. Using “Community Action Teams” MPD tried to maintain good relations with the immigrant community while still addressing the hiring sites and the quality of life issues they sparked.<sup>242</sup> In fact, the MPD approached this problem, not as an immigration enforcement issue, but rather as a general enforcement/trespassing concern.

The MPD and the teams used similar strategies of education and information to constituent groups—contractors, day laborers, businesses and others. Signs, flyers, meetings and working through community groups helped inform all that hiring sites would be subject to trespassing enforcement.<sup>243</sup> While not immediate, the behavior was ultimately changed with cooperation from laborers and those looking to hire. Business in general at hiring sites became more conducive to customers. One officer cited the approach and success as meeting the challenge “to make a difference in a long-standing problem” not just making arrests.<sup>244</sup>

Enforcement activities, tangential to the policy itself were effective, largely on the basis collaborative efforts forged as part of the Special Order. One of the goals of the MPD’s policy specifically was a focus on the mission of public safety, not exclusively immigration enforcement.<sup>245</sup> Items like the enforcement at day labor hiring sites effectively translated the immigration protocol into such enforcement activities.

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242. Ibid., 44.

243. Ibid.

244. Ibid.

245. Ibid., 45.

*Legality*—Mesa’s effort was clearly an attempt to engage the community in the policy and find a consensus of opinion in protocol and ultimately in enforcement. There is a need for an agency policy to guide line level efforts and not to forego any policy in hopes that SLT deputies and officers will somehow make the appropriate enforcement decisions. Having both the support and input of constituent groups, as well as city legal counsel, in a formal policy, there is far greater likelihood that such procedures will maintain appropriate legal standing.

MPD’s protocol and even FLD 441 allow for investigations of immigration status; although, reasonableness of detention while investigating potential immigration violations (as with any suspected crime) is determinant and subject to challenge in the future. The new approach under FLD 441 extends to victims, witnesses and juveniles the authority of officers to investigate immigration status. It is likely that this permission would not preclude probable cause and other legal authority to be in contact with these individuals. Random encounters to merely check immigration status could certainly strain the legality and propriety of enforcement and would risk issues of racial profiling.

*Acceptability*—On its face, an approach that emanates from a collaborative effort on the part of law enforcement executives, community members, city officials and other integral participants—who will be subject to a policy—will make it more readily accepted by those same constituencies.

Enforcement efforts by SLT agencies in virtually any endeavor impact communities and the people in them. Immigration enforcement is a particularly charged issue, with opinions and passions about SLT agency involvement from citizens, interest and advocacy groups, politicians, media and others representing all sides of the issue. Collaborative efforts and policy that demonstrate a consensus approach can help involve the parties in compromise and cooperation. MPD’s efforts in Special Order 2009–01 sought to gain input from those groups “appreciate how this is going to impact them,

individually and as a group” to create “multiple benefits” for many groups to enjoy.<sup>246</sup> Consensus around a policy, or other course of action, will likely lend to its acceptability.

In Mesa, community leaders involved in the policy’s drafting felt the policy made things clearer. Latino Community Services Director, Magdalena Schwartz said the policy was “not too bad,” adding that this would help the Latino community “to know the laws and be able to follow the laws as well as know their rights, by clarifying all of this, it will help [the Latino community] make the right choices.”<sup>247</sup> Phil Austin, former president of the Mesa Association of Hispanic Citizens, indicated it was good for Mesa to have a clear-cut policy.<sup>248</sup>

Prior to the MDP policy revision, critics labeled Mesa a sanctuary city – too lax on illegal immigrants. The policy’s clarification and direction likely gains the buy-in of those groups as well. The police union and membership indicated the policy increases time officers spend on the checks, but added though it “may add to the workload, but it is for a good cause.”<sup>249</sup> Collaboration lent to acceptability.

*Efficiency* –A policy built around consensus that seeks a level of collaboration and compromise that will, hopefully, increase overall understanding and acceptability for a level of efficiency. MPD’s policy did not represent a “radical change” according to police personnel and unions, but it would, however, impact officers’ time to run status checks in street level enforcement.<sup>250</sup> Bryan Soller, president of the Fraternal Order of Police, indicated that the immigration enforcement efforts would be part of regular enforcement activities, not targeted on pursuing immigrants:

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246. William Bratton, and Zachary Tumin, *Collaborate or Perish* (New York, Crown Business, 2012), 160–161.

247. Sonu Munshi, “Mesa Revises Immigration Status Policy,” East Valley Tribune July 2, 2008, [http://www.eastvalleytribune.com/news/article\\_1f1a84c6-ba4a-5b93-a6b0-88b20b42e9d1.html](http://www.eastvalleytribune.com/news/article_1f1a84c6-ba4a-5b93-a6b0-88b20b42e9d1.html).

248. Ibid.

249. Ibid.

250. Ibid.

We don't see this as a huge amount of loss of time. We'll still make stops only for legal reasons and if we come across someone who may be illegal during that process, we'll do a more in-depth interview.<sup>251</sup>

Admittedly then, in this collaborative example, there is an impact on efficiency to the organization, albeit a small one. However, as community leaders have indicated in Mesa, it makes it clearer for community members. They have “the power of knowledge” according to Austin which could lend to making the police and interactions with them involve less trepidation.<sup>252</sup> Having knowledge, understanding enforcement priorities will likely lead to less fear of reporting, more police action in necessary, criminal situations and an increase in overall efficiency. “Mesa will continue its practice of encouraging crime victims or suspects, regardless of their immigration status, to contact them.”<sup>253</sup>

There is an investment of resources and time in protocols such as this. It is important to focus on proper due process and criminal enforcement and community safety. Merely rounding up deportable aliens should not be the goal in SLT agency involvement. As Chief Gascón points out:

It's important to recognize that sometimes the most expeditious way of handling things is not necessarily the best thing. We don't want to deport someone without prosecuting someone here for local crimes if that doesn't make sense at the time.<sup>254</sup>

Collaborative efforts like MPD's do not guarantee greater efficiency, however, having contributors from amongst the community and effected groups will bring expertise and perspective to help. The goal is to “give something up and getting something back that is even better.”<sup>255</sup>

*Implementation* –Implementing a policy driven by a degree of collaboration and consensus can account for its impact. It is possible that any change in operational goals and objectives can affect manpower, time and ultimately budgetary issues.

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251. Ibid.

252. Ibid.

253. Ibid.

254. Ibid.

255. Bratton, *Collaborate or Perish*, 134.

A measured approach to implementation a new policy will require education and training in addition to the impacts of the policy itself. MPD spent four months providing training to its sworn officers.<sup>256</sup> It also provided training to volunteers, community members, the media, and other affected parties.<sup>257</sup> Procedures, attendant forms, incarceration issues all factor into implementation.

Proper implementation takes into account and prioritizes such issues. However, collaborative policy, or any policy, should be a living and adjustable guideline, nimble enough to adjust for need, changes or problems in implementation. Mayor Scott Smith, in Mesa as well as the Chief noted that their policy was not perfect, but that it would “evolve over time.”<sup>258</sup> Flexibility and recognition that some aspects will need to be revisited war an important facet of implementation. It is an ongoing effort to draft reasonable policies and protocol in the SLT enforcement environment, not a one-and-done proposition.

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256. Munshi, “Mesa Revises Immigration Status Policy.”

257. Hoffmaster, et al., “Police and Immigration: How Chiefs Are Leading their Communities through the Challenges,” 23.

258. Munshi, “Mesa Revises Immigration Status Policy.”

## VI. CONCLUSIONS

What is missing is a sensible national policy with a standardized approach regarding immigration, including defined sanctions for illegal immigrants who commit various crimes. Without such a policy, we spin our wheels and end up in the middle of a political debate that seems to generate hate and fear. This is not productive, because most local departments continue to believe that building trust and communication with all of our communities, especially our minority communities, is a key component of effective and enlightened policing.

—Chief Kim Dine, Frederick, MD<sup>259</sup>

### A. OVERVIEW

The 113th United States Congress wrestles with immigration reform through legislation for which there is ongoing debate, even as of this writing. Whether it will achieve what Chief Dine speaks about, in a “thoughtful policy, by which police departments can operate,” is unclear. Labor groups, like that representing ICE officers, the National ICE Council, along with other law enforcement officials as signatories, have released statements indicating their views about problems with the debated legislation:

The legislation before us may have many satisfactory components for powerful lobbying groups and other special interests, but on the subjects of public safety, border security, and interior enforcement, this legislation fails. It is a dramatic step in the wrong direction.”<sup>260</sup>

Others maintain a view counter to that, as with virtually all discussions or efforts. The United States Chamber of Commerce issued a letter on the issue indicating its support for the legislation and its provisions for economic and security improvements.<sup>261</sup>

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259. PERF, “Critical Issues in Policing Series: Police Chiefs and Sheriff’s Speak Out On Local Immigration Enforcement,” 1.

260. LeAnn Mezzacapo, Press Release, “Law Officers Write to Warn Gang of 8 Legislation will Endanger Public Safety,” National ICE Council (and other signatories), May 9, 2013, <http://www.fairus.org/BlogRetrieve.aspx?PostID=1003095&A=SearchResult&SearchID=4885924&ObjectID=1003095&ObjectType=55>.

261. U.S. Chamber of Commerce, “Multi-Industry Letter – S. 744,” June 26, 2013, <http://www.uschamber.com/issues/letters/2013/multi-industry-letter-s-744-border-security-economic-opportunity-and-immigration>.

On its website, the National Immigration Law Center welcomes the legislation as a “positive first step in moving toward a commonsense immigration system.”<sup>262</sup>

No matter the outcome of current legislation, and what form it ultimately takes, SLT enforcement agencies must still address the issue of local policy in enforcement. State and local entities cannot encroach on federal purview and the Supremacy Clause—the issue much at the heart of the Supreme Court’s decision in *Arizona et al. v. United States*. The same decision did allow for law and policy decisions directing enforcement of existing immigration laws. Likewise, federal authorities cannot mandate and effectively conscript enforcement actions of SLT agencies. Addressing the issue is, a will very likely continue to be, a local issue. It is somewhat troubling then that very few SLT agencies have established policies and procedures concerning immigration enforcement. It is even more troubling that existing policies on an obviously contentious issue rarely reflect approaches that are inclusive of interested parties in collaborative efforts.

## B. OPTIONS MATRICES

Policy options regarding SLT agency enforcement in the immigration arena are largely qualitative and would likely vary amongst agencies, depending on size, fiscal constraints, training, and other determinant factors like resources, support from the federal government and other factors. Nonetheless, in examining policy options, an attempt to quantify options in an outcomes matrix can aid in efforts to objectively review those policies.

For the purposes of this research, the following outcome values were applied in consideration to research and available data:

- **Effectiveness 1–5** (1= few or no contacts/enforcement with deportable immigration violators, 5=high number of contacts/enforcement actions)
- **Legality 1–5** (1= conflict/potential conflict with laws/ordinances/decisions, 5 = little or no conflict in those areas)
- **Acceptability** (1= constituencies/citizens/interest groups balk at given policy, 5 = endorsement by same concerned groups)

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262. National Immigration Law Center (NILC), “Senate Immigration Reform Bill,” <http://nilc.org/irsenate2013.html>.

- **Efficiency 1–5** (1 = Enforcement nets offenders but burdens SLT agencies with more duties and tasks for finite resources, 5 = Enforcement nets offenders, while minimizing new burdens on resources)
- **Implementation 1–5** (1 = SLT agencies bear a significant burden in implementing and using an option, 5 = SLT agencies can absorb the enforcement option with little or no impact)

### 1. Directed Enforcement—3.2/5

Directed Enforcement Policy Options Matrix				
Effectiveness 4	Legality 3	Acceptability 2	Efficiency 4	Implementation 3
Net arrests are reported as significant in areas employed with drop in crime rates. Effectiveness can be high if employed correctly	Complex. Enforcement, particularly of criminal provisions legal with SLT agencies. Subject to state and local restrictions, probable cause, etc.	Divided – among communities, advocacy groups and politics surrounding policy	Efficient for removal and homeland security/protection but a potential drain on resources	Requires training and dedication of resources, commitment to educate public and to fiscal responsibilities

Table 1. Directed Enforcement

Directed enforcement efforts achieve some level of result in identifying immigration violators and communicating with and/or working with ICE to determine priorities for immigration detention and adjudication. Broad application of directed enforcement policies could, in fact, strain ICE’s ability to detain and process immigration violations, despite prioritization.

Directed enforcement efforts are allowable, from a legal perspective, but immigration laws are admittedly complex. Understanding and applying directed immigration policies requires training, understanding and communication with federal authorities, regardless of how a given agency attempts to pursue enforcement policies.

Conducting directed enforcement is a “dicey” proposition in terms of community reaction. Immigrants groups could develop what is described as the ‘chilling effect’ and retreat from cooperation and interaction with law enforcement for fear of being handed over for deportation. Others in favor of “enforcement first” efforts, on the other hand, generally laud efforts by SLT agencies in immigration enforcement.

Directed enforcement efforts judiciously applied, can net offenders during routine law enforcement activities. The ubiquitous nature of SLT law enforcement, not surprisingly, will lead to encounters with individuals during responses to calls for service, traffic enforcement, contact with subjects, proactive enforcement, and other duties.

It requires a significant amount of training, resources, enforcement time, detention space and pursuit of adjudication to implement directed enforcement efforts. Agencies commit to making this component a part of everyday activities; expending resources to do so.

## 2. Non-cooperative/Sanctuary—2.8/5

Non-cooperative/Sanctuary Policy - Options Matrix				
Effectiveness 2	Legality 2	Acceptability 2	Efficiency 3	Implementation 5
Effectiveness of directing SLT officers <i>not</i> to take action is difficult to discern and debatable. Positive relationships with immigrant communities and other measures are intangible – hard data is elusive, if it exists	These policies often walk a “fine line” following U.S. Code provisions for providing immigration information from SLT agencies to Federal authorities	Divided – among communities, advocacy groups and politics surrounding policy	SLT officers are directed <i>not</i> to conduct immigration related investigations. Good for focusing on other law enforcement duties, but removes potential force multiplier	No special needs for implementation, merely to ensure SLT officers are <i>not</i> collecting immigration information

Table 2. Sanctuary Enforcement

Non-cooperative/Sanctuary enforcement efforts can be argued, in a fashion, to be effective in that they succeed in *not* identifying potential immigration violators—questions that are rarely if ever asked. Ostensibly, cooperation amongst immigrant communities would be higher, lacking a ‘chilling effect;’ however, evidence here remains anecdotal, not empirically linked to such efforts.

Applicable federal codes make it a violation *not* to provide information regarding a subject’s immigration status to ICE or other relevant authorities. Non-

cooperative/Sanctuary policies rely on never gaining that information in the first place; forbidding authorities from asking. Other SLT jurisdictions openly flaunt efforts under the Patriot Act and seemingly provide some level of protection and local ‘citizenship’ as “Cities of Refuge,” and “Sanctuary Cities.”

Like directed enforcement efforts, sanctuary-type policies are lauded by some segments of a community and assuaged by others. Citizens, advocacy groups, politicians have staked out their respective territories on the issue. Cast against the proposition that non-cooperative policies could shield serious criminal violators, acceptability of sanctuary style policies, especially in hindsight, can prove less acceptable.

The non-cooperative policies are effective in that they do not require SLT officers and deputies to do anything – quite the contrary, they are asked *not* to do things, or ask questions about legal status in the U.S. However, there is question about the effectiveness of such policies in both criminal and immigration arenas. Human trafficking, violent criminal gangs, and drug-smuggling activities often have a nexus to undocumented status and illegal presence in the country. Not ascertaining any of this information could lead to stymieing of related enforcement efforts.

Non-cooperative/Sanctuary measures are relatively easy to implement and do not drain resources or enforcement time, training, etc. SLT officers and deputies working under non-cooperative policies simply do not make such inquiries a part of how they conduct day-to-day operation.

### 3. Collaborative/Consensus Policy—4/5

Collaborative/Consensus Policy - Options Matrix				
Effectiveness 4	Legality 5	Acceptability 4	Efficiency 4	Implementation 3
Immigration related cases are not the primary focus, but an outgrowth. Strategies focusing on public safety and innovative enforcement use other means/measures. Can be highly adaptable if employed correctly	Focuses on existing/standard practice. Immigration investigation/enforcement only employed post-contact for other issues/crimes.	Input gained and maintained from multiple facets of the community for policy development and revisions.	Most actions take place within the context of current law enforcement duties. Public safety goal is met/maintained while cooperating with Federal authorities	Training for officers, community, media etc., is heavy. New procedures, new logistical support may be needed

Table 3. Collaborative Enforcement

Policies built around consensus, through collaboration with concerned segments of the community, potentially maintain a high degree of effectiveness. In general, immigration enforcement is not a focus, but rather an outgrowth of, routine law enforcement activity. Inquiries into legal status in the country are not disallowed by policy, nor is relating that information to federal authorities. Focus on criminal activity and maintaining public safety is primary to immigration enforcement.

Collaborative efforts likely do not run afoul of requirement to communicate immigration status in cooperation with federal authorities. They can also be tailored to focus on criminal violations, not civil discoveries of immigration status. ICE can determine from information provided, what action it wishes to take or detainees to issue.

Inclusion of interested parties from the community, from the city/jurisdiction, from the agency, the media and others in discussing, drafting and forwarding a policy may not completely satisfy all; however, the take-away can be more ‘palatable’ than dictated policy efforts. Collaboration, particularly in contentious enforcement issues, provides insight difficult to gain outside of such a process.

As immigration enforcement efforts are an outgrowth of routine policing efforts and focus on community security and criminal enforcement, they are more efficient – part of SLT officers’ and deputies’ routine efforts. Immigration related issues like human trafficking, violent gangs, drugs, etc., might lead investigative and enforcement efforts, but they have a nexus to both criminal and homeland security concerns.

Implementation of collaborative efforts requires information, training and ongoing measures to determine needed adjustments to the policy. It is likely that no enforcement policy should be a “one and done” effort. Laws, authorities, priorities and communities change. Keeping the same interested parties engaged in monitoring a policy is a part of overall collaboration. Implementation is an ongoing effort, not an end to the means of arriving at the policy.

### **C. OUTCOMES**

Direction and formulation of an SLT agency policy are admittedly as different as the communities each agency serves. As has been discussed, policies are influenced by laws and controlling regulation, agency capabilities, leadership, and also by politics, ideology, and other influences. It is important, yet often difficult find and maintain objectivity, while looking critically at policy measures, SLT procedure and outcomes.

Nonetheless, in an almost overwhelmingly complex problem like immigration enforcement, examining a diversity of approaches by the above metrics, and perhaps other in future research, may provide clarity to policy makers. Ignoring the issue or at least not formulating any policy at all seems counter-intuitive. Throughout the literature and research on the issue, the complexity of immigration laws and enforcement is discussed. Law enforcement in most jurisdictions contends with volumes of codes, laws and regulations its officers and deputies are responsible for enforcing. Complexity is inherent in those endeavors and is not a cause to ignore, not enforce, or not provide direction. SLT officers and deputies need guidelines and direction in what is an admittedly involved issue.

Based on examination of various efforts across numerous SLT agencies, it becomes apparent that the complexity requires collaboration to address. While it may apply to other policy areas, the expertise and efforts of as many concerned as possible will likely lead to a better approach, a stronger policy, and understanding and acceptance. Enforcement efforts often take place in a negative context; citations, fines, court appearances, and even individuals' liberty is in play. Almost nowhere is that more charged than in immigration enforcement—where possible deportation is a facet. Policy that is accepted, understood, and informed by a consensus from those subject to it is stronger and less divisive.

## VII. RECOMMENDATIONS

[B]uilding public trust, and creating expectations of behavior both ways—what the police expect of immigrants, and what they can expect from the police—goes a long way to increasing public safety.

—LAPD Chief Charlie Beck.<sup>263</sup>

### A. THERE MUST BE A POLICY

Law enforcement can lament a lack of federal action for immigration reform, but in order to achieve the trust and understanding towards public safety that Chief Beck discusses, it is imperative that an SLT agency *have a policy*. The literature is replete with discussion of the complexity of immigration laws and the issue in general. More than 50% of agencies, not even addressing the issue directly via policy, is unacceptable.<sup>264</sup>

Complexity of the issue is not a valid justification for a policy decision, nor is it valid for failure to address the issue via policy. SLT agencies and officers deal with complex enforcement issues every day; agency policies address many of these complexities. Immigration enforcement should be no different. Moreover, leaving enforcement decisions to an officer or deputy's discretion, with no guidance at all will undermine trust and public safety.

Lack of policy guidance has been described as an “abdication of managerial responsibility” and has denied “equal protection of the law” because of lack of “affirmative guidance” to officers and deputies.<sup>265</sup> While discretion in law enforcement is vital, even “essential” to law enforcement, lack of policy can lead to discrepancies in enforcement amongst personnel, shifts, and beat areas. Sometimes “difficult decisions”

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263. Charlie Beck, Police Executive Research Forum (PERF), Newsletter, Subject To Debate, “Immigration Policy: What We Have Learned,” Vol. 27, No. 2 April 2013, 1, <http://www.policeforum.org/library/?FolderPath=/library/subject-to-debate/2013/#documents>.

264. PERF, Newsletter, Subject To Debate, “Immigration Survey,” 3.

265. Robert M. Igleburger, and Frank Schubert, ABA Journal, “Policy Making for the Police,” Vol. 58, March 1972, 2.

are left to the line deputy or officer to intuitively design a response.<sup>266</sup> SLT agencies should not leave their personnel in those situations.

## **B. BUILDING POLICY SHOULD BE COLLABORATIVE**

This seems to be thought of as innovative and a new concept in SLT enforcement agencies. Such agencies are typically a cloistered environment to a degree, despite our reliance on and work with citizens and the community. There is a perception that citizens do not understand the police and vice versa. However, collaboration and consensus, despite being the subject of contemporary books and publications, has been topical for decades – even if it was ignored.

Robert M. Igleburger, the Director of Police in Dayton, Ohio in the 1970s was among the more innovative chiefs in that era.<sup>267</sup> He used citizen task forces to advise police policy (little of which existed at the time), polling and meeting with community members to address issues and inform policy.<sup>268</sup> The effort largely disappeared with Igleburger's retirement in 1973.<sup>269</sup> Perhaps Igleburger was ahead of his time. The approach may have been virtually forgotten, but that does not diminish its merit. Igleburger's task force approach outlines collaborative efforts that seem to have been rediscovered. He suggests the importance of "joint efforts of police-citizen task forces where various positions on issues could be discussed and considered."<sup>270</sup> The goal of identifying some of the basic elements of a problem and providing realistic guidance echoes in efforts like that in Mesa, although there seem to be too few other examples.

Igleburger saw merit in allowing citizens to participate in "determining police practices" indicating that the process was (as it often is now) "closed and not subject to scrutiny." He and his agency looked at what should be a very basic question, "who, in

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266. *Ibid.*, 2–3.

267. George L Kelling, National Institute of Justice Research Report, "Broken Windows and Police Discretion," 1999, 28–29, <https://www.ncjrs.gov/pdffiles1/nij/178259.pdf>.

268. *Ibid.*, 29.

269. *Ibid.*

270. Igleburger and Schubert, "Policy Making for the Police," 3.

fact, should determine police enforcement policy in a democratic society?"<sup>271</sup> Policy, he felt, should be "visible to citizens" subject to review, with participation not resistance at its core.<sup>272</sup> Igleburger, 40 years ago, recognized the benefit and outlined collaborative efforts for law enforcement policy in a time when policy may not have existed at all – much as they do not now for immigration enforcement by SLT agencies. It is imperative to gain consensus to arrive at the most effective approach.

On a different front, California SLT agencies and jurisdictions wrestle with a contentious issue impacting the state's communities—Public Safety Realignment under AB 109.<sup>273</sup> Realignment, as it is commonly referred to, fundamentally changed punishments in California for offenses deemed to be non-violent, non-sexual, and non-repeat offenders.<sup>274</sup> It placed many offenders, formerly in state prisons, back into the charge of county and local agencies – both in jails and in community based programs. While it is not the intent of this research to outline in any depth, the requirements of this legislation, it is instructive in terms of the innovative approaches used to meet those requirements.

Community Corrections Partnerships (CCP) are a part of the legislation to implement strategies for contending with inmates in local custody as part of realignment. While the law that grew out of AB 109 establishes the minimal make-up of the CCP's Executive Committee—Chief of Police, Sheriff, District Attorney, Public Defender, Presiding Judge, and Social Services – it does not limit counties' approaches beyond the CCP as to how they will implement realignment and distribute state funding that is part of the program. Though each county has a different approach, collaborative efforts in Contra Costa County, for example, have included a large cross section from community, government, and service organizations. Contra Costa County implemented a Community Advisory Board (CAB) to "provide input" on a number of facets that are part of

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271. Ibid.

272. Ibid.

273. California Department of Corrections and Rehabilitation (CDCR), "Public Safety Realignment," <http://www.cdcr.ca.gov/realignment/>.

274. Ibid.

Realignment and rehabilitative efforts.<sup>275</sup> The CAB informs plans and policies for the county, to include efforts at rehabilitation, community supervision of offenders and other issues. It is comprised of a myriad of community members to include; a retired judge, workforce development coordinator, domestic violence victim advocates, legal aid advocates, residents of county communities, and many others.<sup>276</sup> This type of cross-section of community input and expertise not only benefitted the CCP's efforts, but is exemplary of the collaborative efforts that should inform policy in complex areas like immigration enforcement.

There is a great deal at stake in immigration enforcement by SLT agencies, just as there is in implementation of new policies in Realignment. Millions of dollars to support efforts for rehabilitation have been channeled into Community Based Organizations (CBO) in Contra Costa County, as part of Realignment. The CAB's planning helped drive those decisions and will impact how the procedures take shape for years to come. Public comment at a Board of Supervisors meeting in Contra Costa County highlights the collaboration, as well as the appreciation for being involved in the process by the CBOs and the community.

Chair of the Board of Supervisors, Federal Glover, extolled the efforts of collaboration as bringing “bigger bang for our buck” in arriving at decisions and policy. Community members and representatives of CBOs discussed the process for Contra Costa as approaching “collaboration in new ways” (Rebecca Brown—public comment) and maintaining and “open door policy” in implementing community corrections (Dr. Edwina Perez-Santiago—public comment).<sup>277</sup>

Certainly the issue is unrelated to immigration enforcement by-and-large, however, collaborative policy should involve these measures. Realignment attempts to

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275. Contra Costa County, Community Advisory Board. <http://www.co.contra-costa.ca.us/index.aspx?NID=4165>.

276. Contra Costa County, Members of the Community Advisory Board. <http://www.co.contra-costa.ca.us/DocumentCenter/Home/View/9790>.

277. Contra Cost County, Board of Supervisors meeting, May 21, 2013, Items D3 and D4, video of Supervisors comments and public comment, <http://www.pbtech.org/clients/CCBOS/agenda/ccbos05212013.html>.

keep offenders out of the state penal system and rehabilitate them in local agencies and in the community. Like immigration, this is a divisive issue. Efforts in implementation require collaboration and consensus.

### **C. BUILD RELATIONSHIPS, AS WELL AS POLICY, WITH AFFECTED COMMUNITIES**

Connecting with communities is at the core of effective policing and is a chief tenet of community policing in general. Law enforcement officers and agencies require cooperation and partnership with the communities they serve, regardless of the enforcement issue. Community members need to feel a level of comfort to cooperate with SLT officers and to know that their constitutional rights and civil liberties will be upheld. Community concerns should “transform vague notions” for cooperation with and support for enforcement efforts, to an “involved citizenry.”<sup>278</sup>

Fundamental to law enforcement and community policing in any community is establishing trust amongst the various ‘publics’ an agency serves – community members, organizations, businesses, visitors, etc., is trust. However, we cannot assume that trust automatically exists simply because we are the police, the “good guys,” but rather we must approach the issue by building trust through communication and joint action.<sup>279</sup>

Agency heads will need to go beyond periodic meetings with community members or groups and establish processes that engage those groups in problem solving. Establishing and formalizing membership, goals and objectives and legitimizing those efforts by adopting the resulting input in policy implementation and strategies.

This process should establish an ideal for membership with the flexibility to include new and relevant participants as needed. Publicly announcing and seeking participation is critical to the effort. It is not enough to gain participation by membership on one side of the debate or the other virtually exclusively. Immigrant advocates,

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278. Craig Wilson, “Improving Services at Small and Medium Sized Police Agencies During a Recession,” *The Police Chief*, [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=2087&issue\\_id=52010](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2087&issue_id=52010).

279. David E Booher, and Judith E Innes, *Planning with Complexity*, Routledge, 2010, 197.

enforcement supporters, business members, clergy, residents, and many others should be a part of any board or committee advising the process. This process will be about learning and problem solving. The issue of what an agency should or should not do in relation to immigration enforcement, as has been discussed above, is by no means a clear-cut or decided issue. The issue at the SLT agency level will require public support in strategy development as well as implementation – this social learning will be a vital part of the process.<sup>280</sup>

Some of the specific issues that should be a part of process and strategy discussion in the immigration enforcement arena should address (though not be limited to)<sup>281</sup>:

- Put fears to rest - one of the most useful things local law enforcement can do is explain what police do and do not do. For many immigrants, reassurance that they will not be detained or deported removes the fear of reporting crime. In practice, this could mean telling people any of the following that is appropriate in one's jurisdiction. The department will protect crime victims and witnesses regardless of their immigration status, targeting only the people who commit crimes.
- Encourage people to report crime. Immigrants need to be encouraged to report crime—and told they can do so anonymously, if necessary. Departments should widely publicize the different ways people can report crime.
- Ensure committees are safe zones to foster dialog, both formal and informal. The places where police-community interactions happen are important. Meetings held in precinct offices, for example, can be unsuccessful because few people will attend. Instead holding such meetings should be in neutral settings, such as a local house of worship (and asking clergy leaders to promote the meeting with their congregations). Schools are also good places to engage immigrant communities because parents already go there often and may be comfortable with school personnel. Schools might also be enlisted to help get a message out from police to families. Another idea is to bring a police officer into schools on career day. Establish venues for informal contact, as well. Police officers could team up with staff from the local parks department to bring sports equipment to neighborhoods that have few

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280. Ibid., 203.

281. Matthew Lysakowski, Albert Anthony Pearsall III, and Jill Pope, "COPS Innovations," Vera Institute of Justice and the U.S. DOJ. <http://www.vera.org/sites/default/files/resources/downloads/e060924209-NewImmigrantCommunities.pdf>.

parks or playing fields. Informal contact during, say, a basketball game, can give young people a chance to make a positive connection with a police officer. When time and resources permit, officers should also be encouraged to get out of their car, walk neighborhood streets, and talk casually with residents and business owners. They might also attend a local soccer game or street fair to get to know people.

- Maximize efforts like citizens police academies. Many jurisdictions have existing citizens' police academies for educating community members about policing. Simply knowing what to do in routine encounters, such as a traffic stop, can make interactions go more smoothly. Immigrant community leaders and members should be encouraged to attend. Attending a citizen's police academy meeting might enlighten participants that they are 'not dealing with the same kind of police as we were back home.' Citizens' police academies can be customized: a New Americans' Academy for immigrants and refugees, a Teen Academy, a Hispanic Citizens Police Academy, etc.—with encouragement for citizens from non-immigrant communities or backgrounds to attend.<sup>282</sup>
- Most SLT agencies maintain volunteer groups within their ranks. Radio operators, search and rescue personnel, reserve officers and deputies, clergy—all give of their time and expertise to augment what would otherwise be limited resources of an agency's response. Members of affected communities should be encouraged to volunteer to assist SLT enforcement efforts. Specific volunteer resources/units to reach out with translation services, assistance to potential victims, community resources etc., will contribute to successful efforts while demonstrating the legitimacy and security of law enforcement to immigrant communities who may not have experienced positive relationships in their countries of origin.

## **D. BUILD NEW APPROACHES**

### **1. Consider Actions Closer to Communities**

There is distance and dissonance amongst SLT as well as federal immigration enforcement efforts, immigrant communities and advocacy groups, and groups or citizens who support and petition for stricter enforcement in the immigration arena. A lack of understanding and collaboration due to that distance might be assuaged by localizing efforts, rather than exclusively federalizing them. Some joint efforts like those in Mesa and Escondido go part way in this endeavor.

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282. Ibid.

In the United Kingdom (UK) a key strategy of immigration enforcement efforts, in the fairly recent past, moved to close “distance” of immigration enforcement by not only crime fighting and enforcement efforts, but by co-locating nearly 8,000 immigration officers to work with local police, in the communities, in these new “crime partnership” schemes.<sup>283</sup> Further focusing on the local level and local enforcement, is a geographically organized employment of Local Immigration Teams (LIT) across all regions of the UK. Overall there are 70–80 such teams, committing approximately 8,000 UK Border Agency (UKBA) staff to the local immigration effort.<sup>284</sup> The focus of these teams is local immigration issues, community concerns, and prevention and early intervention of issues. Uniquely, they look to mimic the relationships forged by local police amongst the community through their “neighborhood policing model.”<sup>285</sup> The LITs cooperate with local police in a “clear mission to focus on local immigration crime.”<sup>286</sup> This seems to speak to a realization that, at least at the local level, the focus is on criminality in relation to, and among, immigrants without as great an emphasis on illegal immigration itself; and closing the distance between immigration enforcement and the community. This approach seems to create a greater level of overall effectiveness, as parliamentary representatives in one region in the UK put it:

[T]he local team had been extremely helpful, including holding meetings with them to establish a constructive and supportive relationship. They felt that the value of having an immediate central contact with whom to discuss any area of immigration could not be overestimated; and the ability to get a rapid response to an urgent enquiry had enabled their office to provide a better service to their constituent.<sup>287</sup>

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283. Dita Vogel, William F. McDonald , Bill, Jordan, Franck Duvell, Vesela Kovacheva, and Bastian Vollemer, “Police Cooperation in Internal Enforcement of Immigration Control: Learning from International Comparison,” *Immigration, Crime and Justice, Sociology of Crime, Law and Deviance* V. 13, 218, Emerald Group Publishing, LTD., 2009.

284. *Ibid.*, 12.

285. *Ibid.*

286. *Ibid.*

287. John Vine, “An Inspection of the Hampshire and Isle of Wight Local Immigration Team,” January 2012, 27, *Independent Chief Inspector of Borders and Immigration*. <http://icinspector.independent.gov.uk/wp-content/uploads/2012/06/ICIBI-Inspection-of-Hants-IOW-LIT.pdf>.

Implementation of a ‘flatter’ immigration partnership and enforcement strategy among federal and SLT agencies would bring these efforts more in line with the community policing concepts practices by most SLT agencies across the country. While it is understood that such efforts are not entirely the decision of a local agency, the concept is not entirely without precedent as semi-permanent or permanent partnerships amongst SLT and federal agencies has occurred in other quarters. Among the more prevalent are narcotics and organized crime enforcement task forces displaying models somewhat similar to an LIT/co-located approach.

## **2. Create Specialized Units**

Develop and implement model for specialized units with SLT agencies can, on a day-to-day basis, promote better understanding, communication and collaboration with immigrant communities in settings not aimed at criminal enforcement *per se*. Most agencies maintain an officer or unit aimed at crime prevention efforts on a full or part time basis. A facet of such efforts can and should focus on areas with large immigrant populations specifically. Bringing line-level enforcement officers into those communities with a mission besides routine enforcement positively engages them.

There are examples like Metropolitan Nashville Police Department’s El Protector program, which deploys two dedicated officers who engage the Hispanic community in efforts that emphasize crime prevention and education about the role of law enforcement.. Those assigned run specialized initiatives. For example, they conducted safety inspections for children’s car seats, explaining the law and providing car seats to needy families. The program also enlists immigrant communities’ help to solve crimes. A crime videotaped in a Latino-owned store, for example, can be sent to one of the officers, who forwards it to contacts in the community. The contacts can keep an eye out for the perpetrator, both to protect themselves and to help identify the suspect.<sup>288</sup>

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288. Nashville.gov website, “Nashville Police Department Safety Information El Protector Program,” <http://www.nashville.gov/Police-Department/Safety-Information/El-Protector-Program.aspx>.

### **3. Create Allied Approach—Regionally**

State, county and municipal boundaries are very much imaginary. There are rarely, if ever, physical indicators designating jurisdictions. Day-to-day enforcement activities are not constrained to a give city, county or sometimes states. Pursuits meander through a multiplicity of jurisdictions. Cross-jurisdictional partnerships and enforcement teams are fairly commonplace for narcotics enforcement, drunk-driving efforts, and even training efforts are shared regionally. In fact, a majority of local police departments serving 10,000 or more residents had sworn personnel assigned to a multiagency drug task force during 2007.<sup>289</sup>

Enforcement efforts and relationships amongst immigrant communities and in any immigration enforcement efforts similarly cross these arbitrary boundaries. Immigrant communities may live work and play across several areas.

Communication and subsequent understanding should be developed amongst SLT agencies in efforts in immigrant communities. Agency heads and staff will lead efforts to establish this communication and share resources, staff, material or insight regionally. Training and meeting with community groups and interested parties should take place regularly to develop relationships, guide enforcement efforts, and provide continuing feedback to determine where there is success or need for improvement.

Police agencies can increase their effectiveness through consulting, collaboration, and innovation.<sup>290</sup> Creating innovative, multi-jurisdictional, approaches to training and preparing officers and deputies amongst agencies sharing regional concerns exploits the knowledge base that exists. No one agency likely has the staffing or expertise for all issues, including matters of enforcement in immigration and immigrant communities. Problem-oriented policing (POP) is a fairly established model focusing on causal factors of crime and disorder that can be enhanced by a regional approach to training and enforcement. Training officers with active caseloads from combined agencies could

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289. United States Department of Justice, Bureau of Justice Statistics, “Local Police,” <http://www.bjs.gov/index.cfm?ty=tp&tid=71/>.

290. Wilson, “Improving Services at Small and Medium Sized Police Agencies During a Recession.”

demonstrate POP techniques and strategies to trainees as they work together on actual projects and issues amongst immigrant populations as well.<sup>291</sup>

#### **E. FINAL ANALYSIS—BUILD NEW PARTNERSHIPS—THREE SIDES OF THE PYRAMID**

No longer will it be enough for each criminal justice partner to focus on its own distinct mission within the justice system. Achievement [of goals] will depend on the commitment and collaboration of all justice partners towards a combined mission.<sup>292</sup>



Figure 1. The Immigration Enforcement Collaborative

The above quote from the Executive Committee of Contra Costa County Community Corrections Partnership's Implementation Plan, while speaking of Realignment, summarizes the attitude necessary in the approach to challenging policy issues facing SLT agencies - to include immigration enforcement. Included among "justice partners" in Realignment are community members and organizations. The approach in immigration enforcement policymaking must also include community input. The other essential sides to the pyramid are SLT agencies themselves, and the federal components of immigration enforcement.

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291. Ibid.

292. Diana Becton, Cynthia Belon, Philip Kader, Robin Lipetzky, David Livingston, Chris Magnus, and Mark A. Peterson, Executive Committee, "Contra Costa County 2011/12 Public Safety Realignment Implementation Plan," September 30, 2011, 3, <http://www.co.contra-costa.ca.us/index.aspx?NID=3091>.

As discussed, the federal government maintains primacy in establishing United States immigration laws. The Supreme Court reaffirmed that States or other government entities cannot enact immigration laws that conflict with this federal authority. In the same decision, the Court concluded that SLT entities could involve themselves in investigation and enforcement of immigration laws. In fact, they could be required to do so.<sup>293</sup> Nonetheless, SLT efforts come in cooperation with ICE and other federal immigration authorities to properly carry out enforcement actions. Likewise, ICE and other federal authorities' efforts are augmented by appropriate involvement of SLT agencies.

SLT enforcement agencies face the challenge of maintaining law and order, as well as relationships, in their respective communities. Beyond that, however, in post-9/11 America, SLT agencies are part of the fabric of homeland security efforts and enterprises. For reasons previously discussed law enforcement is among the more ubiquitous components of homeland security. Routine efforts and duties make SLT agencies the “force multiplier” that can thwart broader threats to national security, often without it being apparent.<sup>294</sup> The 9/11 Commission report also acknowledges SLT enforcement’s criticality in homeland security. Ignoring this capacity in appropriate cooperation in immigration enforcement at some level (or at least addressing it as part of agencies’ policy efforts) is counter-intuitive.

Citizens, advocacy groups on both sides of the immigration issue, immigrant communities, and other interested constituencies desire government policies, to include law enforcement policies, reflective of their interests and viewpoints. They rightfully seek a means to be heard on salient issues. Immigration enforcement and related policies is certainly one of them. Public comment at official meetings and other sanctioned means of input are essential, but not enough. Those mechanisms are rarely able to achieve the direct input to inform policies and procedures in the bureaucracies of SLT agencies and administrations. There is a perception that such input is heard but not acted upon in an appreciable way. Policies are ultimately made outside of public scrutiny or input, and

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293. United State Supreme Court, *Arizona, et al., v. United States*.

294. McCormack, “State and Local Law Enforcement Contributions,” 6.

enacted with little or no communication or education. A seat at the table, making identified groups a part of a collaborative process, while challenging, can better inform policy decisions.

Examples abound of current efforts that are flawed for lack of collaboration among all three sides of the pyramid. Secure Communities has become one of the primary initiatives of ICE in immigration enforcement, particularly as it relates to cooperation with SLT agencies. While the federal components, along with many SLT agencies involved implicitly understand and support Secure Communities, the community component is lacking. Confusion and misinformation has plagued the effort almost since its inception.<sup>295</sup> SLT agencies cooperating with Secure Communities, particularly those that have agreements to house detainees, are left to contend with the outgrowth of the confusion. ICE tends to distance itself not only from implementation but from communication, referring community questions or concerns to contact a Washington, D.C., office for inquiries of issues occurring locally. This generally leaves the SLT component to work with the community inquiries, playing go-between, and generally giving the appearance of being less than direct or open. Those same SLT agencies then suffer from potentially damaged relationships and flagging support.

SLT agencies ironically work at arm's length very often from the communities they serve. This is especially true administratively and almost certainly from the policy perspective. Policy makers are not community officers and vice-versa. Chiefs and Sheriffs and their executive managers are busy in their duties but are also insulated from the communities for whom they are directing policy and procedure. While community policing models include frequent meetings in the community, generally they are not intended to include actual policy discussion, formation and implementation. Though important, most of them are a dialog for ongoing concerns between officers and community members; only occasionally do they take place inclusive of executive management and virtually never with federal authorities. Broadening engagement with

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295. Charles K. Edwards, Department of Homeland Security Office of Inspector General, "Communication Regarding Participation in Secure Communities," [http://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-66\\_Mar12.pdf](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-66_Mar12.pdf).

the community to include policy making, where necessary, will inform and educate all involved and can result in a product that is wholly more acceptable to those concerned. The complexity of the immigration issue is clear. Gaining insight from affected community members, including SLT and federal authorities in the discussion and implementation, can illuminate facets that might otherwise be missed.

Community members and interest groups with a stake in, or passion for, the immigration enforcement issue can also be insular in nature. While their perspective is not necessarily flawed, it may be myopic. Exposure to the nature of SLT and federal enforcement efforts and procedures can dispel misgivings about the approaches and provide improvements to achieve success. Much discussion has been had about fear amongst immigrant communities towards law enforcement. The nature of law enforcement in their countries of origin may contribute to fear and lack of cooperation. Exposure to law enforcement through input to inform policy can remove some of the barriers created – and remove the fear. SLT agencies, along with federal authorities should implement inclusive practices when arriving at procedures that impact SLT communities. Immigrant communities do not want to be victimized by criminals or subject to violence or abuse. If SLT enforcement providers are unfamiliar and misunderstood by those communities, they will likely retreat from those meant to help them. SLT and Federal authorities will find it more difficult to achieve the best approach absent cooperation of those same communities.

If we accept that each of the three components is important individually – federal primacy and federal immigration enforcement efforts to protect national security, SLT enforcement's vital role in both in their law and order role in the community but as a homeland security component, and fundamental necessity of community members and advocates to influence the environment of their communities (inclusive of law enforcement); then it would follow that it is perhaps more important that these elements function collaboratively. Emphasis on one area or component without consideration for the others almost certainly will not achieve any level of synergy in an issue as contentious as immigration enforcement. None of these components exist in a vacuum,

nor do the enforcement efforts in the field. Complex policy should not be created in a vacuum; absent collaboration and consensus.

Disparate groups can come together in efforts that are palatable to all involved, much like the efforts to achieve consensus for Realignment policy. It is likely, the results will be vastly more effective. Resources can be found and allocated that otherwise would not have been evident. A sense of ownership of the outcomes can aid in cooperation. The enforcement sides of the pyramid, federal or local, operating less like adversaries and more like partners with the affected communities in the effort.

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